

BY Parker Jefferson Temple-Jones El Paso H. B. No. 417
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Caldwell A BILL TO BE ENTITLED

AN ACT

relating to the definition and regulation of unlawful trade, acts
and practices, the protection of Texas consumers, and providing
for consumer remedies; amending Chapter 17, Business & Commerce
Code, as amended, by adding Subchapter E; repealing Chapter 10,
Title 79, Revised Civil Statutes of Texas, 1925, as amended
(Articles 5069-10.01 et seq., Vernon's Texas Civil Statutes); and
declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Chapter 17, Business & Commerce Code, as amended,
is amended by adding Subchapter E to read as follows:

"SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND
CONSUMER REMEDIES

"Sec. 17.41. SHORT TITLE. This subchapter may be cited
as the Deceptive Trade Practices-Consumer Remedies Act.

"Sec. 17.42. WAIVER; PUBLIC POLICY. Any waiver by a
consumer of the provision of this subchapter is contrary to public
policy and is unenforceable and void.

"Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this
subchapter are not exclusive. The remedies provided in this
subchapter are in addition to any other procedures or remedies
provided for in any other law.

"Sec. 17.44. CONSTRUCTION AND APPLICATION. This subchapter
shall be liberally construed and applied to promote its underlying

1 purposes, which are to protect consumers against false, misleading,
2 and deceptive business practices, unconscionable actions, and
3 breaches of warranty, and to provide efficient and economical
4 procedures to secure such protection.

5 "Sec. 17.45. DEFINITIONS. As used in this subchapter:

6 "(1) 'Goods' means tangible chattels bought for use
7 primarily for personal, family, or household purposes, including
8 certificates or coupons exchangeable for such goods, and including
9 goods which, at the time of the sale or subsequently, are to be
10 affixed to real property as to become a part of the real property
11 whether or not severable.

12 "(2) 'Services' means work, labor, and services for
13 other than commercial or business use, including services furnished
14 in connection with the sale or repair of goods.

15 "(3) 'Person' means an individual, partnership,
16 corporation, association, or other group, however organized.

17 "(4) 'Consumer' means an individual who seeks or
18 acquires by purchase or lease, any goods or services for personal,
19 family, or household purposes.

20 "(5) 'Merchant' means a party to a consumer
21 transaction other than a consumer.

22 "(6) 'Trade' and 'commerce' mean the advertising,
23 offering for sale, sale, lease, or distribution of any good or
24 service, of any property, tangible or intangible, real, personal,
25 or mixed, and any other article, commodity, or thing of value,
26 wherever situated, and shall include any trade or commerce directly
27 or indirectly affecting the people of this state.

1 "(7) 'Documentary material' includes the original
2 or a copy of any book, record, report, memorandum, paper,
3 communication, tabulation, map, chart, photograph, mechanical
4 transcription, or other tangible document or recording, wherever
5 situated.

6 "(8) 'Consumer protection division' means the
7 antitrust and consumer protection division of the attorney
8 general's office.

9 "(9) 'Knowingly' means actual awareness of the falsity
10 or deception, but actual awareness may be inferred where objective
11 manifestations indicate that a person acted with actual awareness.

12 "Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a)
13 False, misleading, or deceptive acts or practices in the conduct
14 of any trade or commerce are hereby declared unlawful.

15 "(b) The term 'false, misleading, or deceptive acts or
16 practices' includes, but is not limited to, the following acts:

17 "(1) passing off goods or services as those of
18 another;

19 "(2) causing confusion or misunderstanding as to the
20 source, sponsorship, approval, or certification of goods or
21 services;

22 "(3) causing confusion or misunderstanding as to
23 affiliations, connection, or association with, or certification
24 by, another;

25 "(4) using deceptive representations or designations
26 of geographic origin in connection with goods or services;

27 "(5) representing that goods or services have

1 sponsorship, approval, characteristics, ingredients, uses,
2 benefits, or quantities which they do not have or that a person
3 has a sponsorship, approval, status, affiliation, or connection
4 which he does not;

5 "(6) representing that goods are original or new if
6 they are deteriorated, reconditioned, reclaimed, used, or
7 secondhand;

8 "(7) representing that goods or services are of a
9 particular standard, quality, or grade, or that goods are of a
10 particular style or model, if they are of another;

11 "(8) disparaging the goods, services, or business
12 of another by false or misleading representation of facts;

13 "(9) advertising goods or services with intent not
14 to sell them as advertised;

15 "(10) advertising goods or services with intent not
16 to supply a reasonable expectable public demand, unless the
17 advertisements disclosed a limitation of quantity;

18 "(11) making false or misleading statements of fact
19 concerning the reasons for, existence of, or amount of price
20 reductions;

21 "(12) representing that an agreement confers or
22 involves rights, remedies, or obligations which it does not have
23 or involve, or which are prohibited by law;

24 "(13) knowingly making false or misleading statements
25 of fact concerning the need for parts, replacement, or repair
26 service;

27 "(14) misrepresenting the authority of a salesman,

1 representative or agent to negotiate the final terms of a consumer
2 transaction;

3 "(15) basing a charge for the repair of any item in
4 whole or in part on a guaranty or warranty instead of on the value
5 of the actual repairs made or work to be performed on the item
6 without stating separately the charges for the work and the charge
7 for the warranty or guaranty, if any;

8 "(16) disconnecting, turning back, or resetting the
9 odometer of any motor vehicle so as to reduce the number of miles
10 indicated on the odometer gauge;

11 "(17) advertising of any sale by fraudulently
12 representing that a person is going out of business;

13 "(18) using or employing a chain referral sales plan
14 in connection with the sale or offer to sell of goods, merchandise,
15 or anything of value, which uses a sales technique, plan,
16 arrangement, or agreement in which a buyer or prospective buyer
17 is offered the opportunity to purchase merchandise or goods and
18 in connection with the purchase receives the seller's promise or
19 representation that the buyer shall have the right to receive
20 compensation or consideration in any form for furnishing to the
21 seller the names of other prospective buyers;

22 "(19) representing that a guarantee or warranty
23 confers or involves rights or remedies which it does not have or
24 involve; or

25 "(20) acts or practices declared to be false,
26 misleading, or deceptive acts or practices by a regulation of the
27 consumer protection division under this subchapter.

1 "(c) It is the intent of the legislature that in construing
2 Subsection (a) of this section the courts to the extent possible
3 will be guided by Subsection (b) of this section and the
4 interpretations given by the Federal Trade Commission and federal
5 courts to Section 5(a)(1) of the Federal Trade Commission Act [15
6 U.S.C.A. 45(a)(1)].

7 "(d) The omission of a given act or practice from Subsection
8 (b) of this section or the failure of the consumer protection
9 division to issue a regulation regarding an act or practice, or
10 both, shall not limit the courts from determining that the act
11 or practice is unlawful under this subchapter.

12 "Sec. 17.47. REGULATIONS. (a) The consumer protection
13 division may issue, after hearing, regulations declaring other
14 acts or practices to be false, misleading, or deceptive acts or
15 practices. The regulations may not be in conflict with the rules,
16 regulations, and decisions issued by the Federal Trade Commission
17 and the federal courts in interpreting Section 5(a)(1) of the
18 Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)], as amended.

19 "(b) The consumer protection division shall:

20 "(1) publish a description of the organization of
21 the division, stating the general course and method of operation
22 of the division and the methods by which the public may obtain
23 information or make submissions or requests;

24 "(2) adopt and publish rules of practice setting
25 forth the nature and requirement of all formal and informal
26 procedures available, including a description of the forms and
27 instructions used by the division; and

1 "(3) make available for public inspection all
2 regulations, written statements of policy, and interpretations,
3 formulated, used, or adopted by the consumer protection division
4 in discharging its function under this subchapter.

5 "(c) Prior to the adoption, amendment, or repeal of a
6 regulation under this section, the consumer protection division
7 shall give notice of the time, date, and place of the hearing at
8 least 60 days prior to the date set for hearing. The notice shall
9 contain the statement of the terms or substance of the intended
10 action or a description of the subjects and issues involved and
11 the manner in which interested persons may present their views.
12 Notice shall be given in the same manner as required for meetings
13 of other governmental bodies and to any person requesting notice.
14 The consumer protection division may charge a reasonable fee to
15 cover the cost of mailing notices to persons requesting notices.

16 "(d) A petition may be submitted to the consumer protection
17 division to adopt, amend, or repeal a regulation. The petition
18 must be signed by 100 interested persons and supported by evidence
19 that a particular act or practice has been or could be false,
20 misleading, or deceptive to the consumer, or that an act or
21 practice declared to be false, misleading, or deceptive by a
22 regulation of the division is not in fact false, misleading, or
23 deceptive. Within 30 days after receipt of the petition the
24 consumer protection division must either deny the petition or
25 initiate hearing proceedings under this section. On denial of
26 the petition the consumer protection division must state the
27 reasons for the denial in writing.

1 "(e) The hearing shall be opened to the public and any
2 person may present testimony, data, or other information in writing
3 or orally to the consumer protection division regarding the acts
4 or practices under consideration.

5 "(f) A regulation issued under this section must be filed
6 with the secretary of state and becomes effective 30 days after
7 the date it is filed unless a later date is specified in the
8 regulation. The secretary of state shall keep a permanent register
9 of regulations issued under this section open to the public
10 inspection. The secretary of state shall furnish copies of
11 regulations filed under this section to persons requesting copies.
12 A fee may be charged not to exceed the cost of furnishing the
13 regulation.

14 "(g) A person aggrieved by the denial of the hearing under
15 Subsection (d) of this section or by the adoption, amendment, or
16 repeal of a regulation or failure to issue a regulation under
17 this section, may file a petition in a district court of Travis
18 County for a declaratory judgment on the validity or applicability
19 of a regulation adopted, amended, or repealed under this section
20 or on the denial of a hearing under Subsection (d) of this section.
21 The consumer protection division shall be made a party to the
22 action. In a suit under this subsection the district court may
23 issue injunctions, including temporary restraining orders, for
24 any appropriate purpose and the injunctions shall be issued without
25 bond and on the terms and conditions determined by the court.

26 "(h) The action of the consumer protection division in
27 adopting, amending, repealing, or failing to adopt a regulation

1 or denying of a hearing may be invalidated only if it is found
2 that it:

3 "(1) violates a constitutional or state statutory
4 provision;

5 "(2) exceeds the statutory authority of the consumer
6 protection division;

7 "(3) is arbitrary or capricious or characterized by
8 abuse of discretion or unwarranted exercise of discretion;

9 "(4) is so vague that it does not establish
10 sufficiently definite standards with which conduct can be
11 conformed;

12 "(5) is made on unlawful procedure; or

13 "(6) is clearly erroneous in view of the reliable,
14 probative, and substantial evidence in the whole record as
15 submitted.

16 "Sec. 17.48. RESTRAINING ORDERS. (a) Whenever the consumer
17 protection division has reason to believe that any person is
18 engaging in, has engaged in, or is about to engage in any act or
19 practice declared to be unlawful by this subchapter or by a
20 regulation issued under this subchapter, and that proceedings
21 would be in the public interest, the division may bring an action
22 in the name of the state against the person to restrain by
23 temporary or permanent injunction the use of such method, act,
24 or practice.

25 "(b) An action brought under Subsection (a) of this section
26 may be commenced in the district court of the county in which the
27 person against whom it is brought resides, has his principal place

1 of business, is doing business, or in the district court of the
2 county where the transaction occurred or any substantial portion
3 of the transaction occurred, or, on the consent of the parties,
4 in a district court of Travis County. The court may issue
5 temporary or permanent injunctions to restrain and prevent
6 violations of this subchapter or regulations issued under this
7 subchapter, and the injunctions shall be issued without bond.

8 "(c) In addition to the request for a temporary or permanent
9 injunction in a proceeding brought under Subsection (a) of this
10 section, the consumer protection division, on a finding by the
11 court that the defendant has engaged or is engaging in a practice
12 declared to be unlawful by this subchapter or by regulations
13 issued under this subchapter, may request a civil penalty of not
14 more than \$2,000 per violation not to exceed a total of \$10,000
15 to be paid to the state.

16 "(d) The court may make such additional orders or judgments
17 as are necessary to compensate identifiable persons for actual
18 damages or restoration of money or property, real or personal,
19 which may have been acquired by means of any act or practice
20 restrained. Damages may not include any damages incurred beyond
21 a point two years prior to the institution of the action by the
22 consumer protection division. Orders of the court may also include
23 the appointment of a receiver or a sequestration of assets on a
24 person who has been ordered by a court to make restitution under
25 this section has failed to do so within three months after the
26 order to make restitution has become final and nonappealable.

27 "(e) Any person who violates the terms of an injunction

1 under this section shall forfeit and pay to the state a civil
2 penalty of not more than \$10,000 per violation. In determining
3 whether or not an injunction has been violated the court shall
4 take into consideration the maintenance of procedures reasonably
5 adapted to insure compliance with the injunction. For the purposes
6 of this section, the district court issuing the injunction shall
7 retain jurisdiction, and the cause shall be continued, and in the
8 cases, the consumer protection division, or the district, county,
9 or city attorney with prior notice to the consumer protection
10 division, acting in the name of the state, may petition for
11 recovery of civil penalties under this section.

12 "(f) An order of the court awarding civil penalties under
13 Subsection (e) of this section applies only to violations of the
14 injunction incurred prior to the awarding of the penalty order.
15 Second or subsequent violations of an injunction issued under
16 this section are subject to the same penalties set out in
17 Subsection (e) of this section.

18 "Sec. 17.49. DUTY OF DISTRICT, COUNTY, AND CITY ATTORNEY.

19 (a) It is the duty of the district, county, and city attorneys
20 to lend to the consumer protection division any assistance
21 requested in the commencement and prosecutions of actions under
22 this subchapter.

23 "(b) A district, county, or city attorney, with prior
24 written notice to the consumer protection division, may institute
25 and prosecute actions seeking injunctive relief under this
26 subchapter. On request, the consumer protection division shall
27 assist the district, county, or city attorney in any action taken

1 under this subchapter. If an action is prosecuted by a district,
2 county, or city attorney alone, he shall make a full report to
3 the consumer protection division including the final disposition
4 of the matter.

5 "Sec. 17.50. EXEMPTIONS. (a) Nothing in this subchapter
6 shall apply to the owner or employees of a regularly published
7 newspaper, magazine, or telephone directory, or broadcast station,
8 or billboard, wherein any advertisement in violation of this
9 subchapter or regulations issued under this subchapter is published
10 or disseminated, unless it is established that the owner or
11 employees of the advertising medium have knowledge of the false,
12 deceptive, or misleading acts or practices declared to be unlawful
13 by this subchapter or regulations issued under this subchapter,
14 or had a direct or substantial financial interest in the sale or
15 distribution of the unlawfully advertised good or service.

16 Financial interest as used in this section relates to an
17 expectation which would be the direct result of such advertisement.

18 "(b) Nothing in this subchapter shall apply to acts or
19 practices authorized under specific rules or regulations
20 promulgated by the Federal Trade Commission under Section 5(a)(1)
21 of the Federal Trade Commission Act (15 U.S.C.A. 45(a)(1)). The
22 provisions of this subchapter do apply to any act or practice
23 prohibited or not specifically authorized by a rule or regulation
24 of the Federal Trade Commission. An act or practice is not
25 specifically authorized if no rule or regulation has been issued
26 on the act or practice.

27 "Sec. 17.51. CONFLICT OF LAWS. The determination that an

1 act or practice is false, misleading, or deceptive by this
2 subchapter or by a regulation of the consumer protection division
3 shall prevail over any other conflicting rule or regulation of
4 this state, to the extent of conflict only.

5 "Sec. 17.52. RELIEF FOR CONSUMERS. (a) A consumer may
6 maintain an action if he has been adversely affected by any of
7 the following:

8 "(1) the use or employment by any person of an act
9 or practice declared to be unlawful by Section 17.46 of this
10 subchapter or regulations issued under this subchapter;

11 "(2) a failure by any person to comply with an express
12 or implied warranty;

13 "(3) any unconscionable action or cause of action
14 by any person; or

15 "(4) a failure by any person to comply with the
16 provisions of Chapter 2, 3, 4, 5, or 7, Title 79, Revised Civil
17 Statutes of Texas, 1925, as amended (Articles 5069-2.01 et seq.,
18 Vernon's Texas Civil Statutes), or the rules or regulations
19 promulgated under these chapters.

20 "(b) In a suit filed under this section, each consumer who
21 prevails may obtain:

22 "(1) three times the amount of actual damages plus
23 court costs and attorneys' fees reasonable in relation to the
24 amount of work expended;

25 "(2) an order enjoining such acts or failure to act;

26 "(3) punitive damages;

27 "(4) orders necessary to restore to any party to the

1 suit any money or property, real or personal, which may have been
2 acquired in violation of this subchapter or regulations issued
3 under this subchapter; and

4 "(5) any other relief which the court deems proper,
5 including the appointment of a receiver or the revocation of a
6 license or certificate authorizing a person to engage in business
7 in this state if the judgment has not been satisfied within three
8 months of the date of the final judgment.

9 "(c) On a finding by the court that an action under this
10 section was groundless and brought in bad faith or for the purpose
11 of harassment, the court may award to the defendant reasonable
12 attorneys' fees in relation to the amount of work expended.

13 "Sec. 17.53. CLASS ACTIONS. (a) If a consumer has been
14 damaged by an unlawful method, act, or practice contained in
15 Subsection (b), Section 17.46 of this subchapter or by an act or
16 practice or type of act or practice previously declared unlawful,
17 deceptive, or unconscionable to the consumer by a final judgment
18 of an appellate court of proper jurisdiction and venue in this
19 state that was reported officially, the consumer protection
20 division or a consumer may bring an action on behalf of himself
21 and other consumers if the unlawful act or practice has caused
22 damage to the other consumers who are similarly situated, to
23 recover damages and relief as provided in this subchapter.

24 "(b) A plaintiff who prevails on a class action under this
25 subchapter may recover:

26 "(1) court costs and attorneys' fees reasonable in
27 relation to the amount of work expended in addition to actual

1 damages;

2 "(2) an order enjoining the act or failure to act;

3 "(3) punitive damages;

4 "(4) any orders which may be necessary to restore
5 to any party to the suit any money or property, real or personal,
6 which may have been acquired in violation of this subchapter; and

7 "(5) any other relief which the court deems proper
8 including the appointment of the receiver or revocation of a
9 license or certificate to engage in business in this state if the
10 judgment has not been satisfied within six months of the date of
11 issuance of the final judgment.

12 "(c) On a finding by the court that an action under this
13 section was brought in bad faith or for purposes of harassment,
14 the court may award to the defendant reasonable attorneys' fees
15 in relation to the work expended and costs.

16 "Sec. 17.54. CLASS ACTION: PROCEDURE. (a) The court
17 shall permit one or more members of a class to sue or be sued as
18 representative parties on behalf of the class only if:

19 "(1) the class is so numerous that joinder of all
20 members is impracticable;

21 "(2) there are questions of law or fact common to
22 the class;

23 "(3) the claims or defenses of the representative
24 parties are typical of the claims or defenses of the class; and

25 "(4) the representative parties will fairly and
26 adequately protect the interests of the class.

27 "(b) An action may be maintained as a class action if the

1 prerequisites of Subsection (a) of this section are satisfied and
2 in addition:

3 "(1) the prosecution of separate actions by or against
4 individual members of the class would create a risk of:

5 "(A) inconsistent or varying adjudications
6 with respect to individual members of the class which would
7 establish incompatible standards of conduct for the party opposing
8 the class; or

9 "(B) adjudications with respect to individual
10 members of the class which would as a practical matter be
11 dispositive of the interests of the other members not parties to
12 the adjudications or substantially impair or impede their ability
13 to protect their interests; or

14 "(2) the party opposing the class has acted or refused
15 to act on grounds generally applicable to the class, thereby
16 making appropriate final injunctive relief or corresponding
17 declaratory relief with respect to the class as a whole; or

18 "(3) the court finds that the questions of law or
19 fact common to the members of the class predominate over any
20 questions affecting only individual members, and that a class
21 action is superior to other available methods for the fair and
22 efficient adjudication of the controversy. The matters pertinent
23 to the findings include:

24 "(A) the interest of members of the class in
25 individually controlling the prosecution or defense of separate
26 actions;

27 "(B) the extent and nature of any litigation

1 concerning the controversy already commenced by or against members
2 of the class;

3 "(C) the desirability or undesirability of
4 controversy concentrating the litigation of the claims in the
5 particular forum; and

6 "(D) the difficulties likely to be encountered
7 in the management of a class action.

8 "(c) In construing this section, the courts of Texas shall
9 be guided by the decisions of the federal courts interpreting
10 Rule 23, Federal Rules of Civil Procedure.

11 "(d) As soon as practicable after the commencement of an
12 action brought as a class action, the court shall determine by
13 order whether it is to be maintained as a class action. An order
14 under this subsection may be altered or amended before a decision
15 on the merits. An order determining that the action may or may
16 not be brought as a class action is an interlocutory order which
17 is appealable and the procedures provided in Rule 385, Texas Rules
18 of Civil Procedure, apply.

19 "(e) If the action is permitted as a class action, the
20 court shall direct to the members of the class the best notice
21 practicable under the circumstances, including individual notice
22 to all members who can be identified through reasonable effort.

23 "(f) The notice shall contain a statement that:

24 "(1) the court will exclude the member notified from
25 the class if he so requests by a specified date;

26 "(2) the judgment, whether favorable or not, will
27 include all members who do not request exclusion; and

1 "(3) any member who does not request exclusion, if
2 he desires, may enter an appearance through counsel.

3 "(g) A class action may not be dismissed, settled, or
4 compromised without the approval of the court, and notice of the
5 proposed dismissal, settlement, or compromise shall be given to
6 all members of the class in such manner as the court directs.

7 "(h) When appropriate, an action may be brought or
8 maintained as a class action with respect to particular issues
9 or a class may be divided into subclasses and each subclass treated
10 as a class, and the provisions of this section shall be construed
11 and applied accordingly.

12 "(i) The judgment in a class action shall describe those
13 to whom the notice was directed and who have not requested
14 exclusion and those the court finds to be members of the class.
15 The court shall direct to the members of the class the best notice
16 practicable under the circumstances, including individual notice
17 to all members who can be identified through reasonable effort.

18 "(j) In the conduct of a class action the court may make
19 appropriate orders:

20 "(1) determining the course of proceedings or
21 prescribing measures to prevent undue repetition or complication
22 in the presentation of evidence or argument;

23 "(2) requiring, for the protection of the members
24 of the class or otherwise for the fair conduct of the action,
25 that notice be given in such manner as the court may direct to
26 some or all of the members or to the attorney general of any step
27 in the action, or of the proposed extent of the judgment, or of

1 the opportunity of members to signify whether they consider the
2 representation fair and adequate, to intervene and present claims
3 or defenses, or otherwise to come into the action;

4 "(3) imposing conditions on the representative parties
5 or on intervenors;

6 "(4) requiring that the pleadings be amended to
7 eliminate allegations as to representation of absent persons, and
8 that the action proceed accordingly; or

9 "(5) dealing with similar procedural matters.

10 "(k) The filing of a suit under this section tolls the
11 statute of limitations for bringing a suit by an individual under
12 Section 17.52 of this subchapter. An order of the court denying
13 the bringing of a suit as a class action does not affect the
14 ability of an individual to bring the same or a similar suit under
15 Section 17.52 of this subchapter.

16 "Sec. 17.55. PRELIMINARY NOTICE. (a) At least 30 days
17 prior to the commencement of a suit for damages under Section
18 17.53 of this subchapter, the consumer must notify the intended
19 defendant of his complaint and make demand that the defendant
20 provide relief to the consumer and others similarly situated.

21 "(b) The notice must be in writing and sent by certified
22 or registered mail, return receipt requested, to the place where
23 the transaction occurred, the intended defendants' principal place
24 of business in this state, or if neither will effect notice, to
25 the office of the Secretary of State of Texas.

26 "(c) An action for injunctive relief under Section 17.53
27 of this subchapter may be commenced without compliance with

1 Subsection (a) of this section. Not less than 30 days after the
2 commencement of an action for injunctive relief, and after
3 compliance with the provisions of Subsection (a) of this section,
4 the consumer may amend his complaint without leave of court to
5 include a request for damages.

6 "(d) No damages may be awarded if:

7 "(1) within 30 days of receipt of the notice and
8 demand the defendant notifies the consumer by certified or
9 registered mail, return receipt requested, that he will provide
10 relief to the consumer and others similarly situated and furnishes
11 his plan for providing the relief; and

12 "(2) the consumer notifies the defendant that the
13 plan is acceptable.

14 "Sec. 17.56. DAMAGES: DEFENSE. No award of damages may
15 be given in any action filed under Section 17.53 of this subchapter
16 if the defendant:

17 "(1) proves that the action complained of resulted
18 from a bona fide error notwithstanding the use of reasonable
19 procedures adopted to avoid any error; and

20 "(2) made restitution of any consideration received
21 from any member of the class.

22 "Sec. 17.57. PROMOTIONAL MATERIAL. If damages or civil
23 penalties are assessed against the seller of goods or services
24 for advertisements or promotional material in a suit filed under
25 Section 17.48, 17.49, 17.52, or 17.53 of this subchapter, the
26 seller of the goods or services has a cause of action against a
27 third party for the amount of damages or civil penalties assessed

1 against the seller plus attorneys' fees on a showing that:

2 "(1) the seller received the advertisements or
3 promotional material from the third party;

4 "(2) the seller's only action with regard to the
5 advertisements or promotional material was to disseminate the
6 material; and

7 "(3) the seller has ceased disseminating the material.

8 "Sec. 17.58. VENUE. An action brought under Section 17.52
9 or 17.53 of this subchapter may be commenced in the county in
10 which the person against whom the suit is brought resides, has
11 his principal place of business, or is doing business.

12 "Sec. 17.59. SUBPOENAS. The clerk of a district court at
13 the request of any party to a suit pending in his court which is
14 brought under this subchapter shall issue a subpoena for any
15 witness or witnesses who may be represented to reside within 100
16 miles of the courthouse of the county in which the suit is pending
17 or who may be found within such distance at the time of trial.
18 The clerk shall issue a separate subpoena and a copy thereof for
19 each witness subpoenaed. When an action is pending in Travis
20 County on the consent of the parties a subpoena may be issued for
21 any witness or witnesses who may be represented to reside within
22 100 miles of the courthouse of a county in which the suit could
23 otherwise have been brought or who may be found within such
24 distance at the time of the trial.

25 "Sec. 17.60. VOLUNTARY COMPLIANCE. (a) In the
26 administration of this subchapter the consumer protection division
27 may accept assurances of voluntary compliance with respect to any

1 act or practice which violates this subchapter or regulations
2 issued under this subchapter from any person who is engaging in,
3 has engaged in, or is about to engage in the act or practice.
4 The assurance shall be in writing and shall be filed with and
5 subject to the approval of the district court in the county in
6 which the alleged violator resides or does business, or in the
7 district court of Travis County.

8 "(b) The acceptance of an assurance of voluntary compliance
9 may be conditioned on the stipulation that the person in violation
10 of this subchapter or regulations issued under this subchapter
11 restore to any person in interest any money or property, real or
12 personal, which may have been acquired by means of acts or
13 practices which violate this subchapter or regulations issued
14 under this subchapter.

15 "(c) An assurance of voluntary compliance shall not be
16 considered an admission of prior violation of this subtitle.
17 However, unless an assurance has been rescinded by agreement of
18 the parties or voided by a court for good cause, subsequent failure
19 to comply with the terms of an assurance is prima facie evidence
20 of a violation of this subchapter.

21 "(d) Matters closed by the filing of an assurance of
22 voluntary compliance may be reopened at any time. Assurances of
23 voluntary compliance shall in no way affect individual rights of
24 action under this subchapter, except that the rights of individuals
25 with regard to money or property received pursuant to a stipulation
26 in the voluntary compliance under Subsection (b) of this section
27 are governed by the terms of the voluntary compliance.

1 "Sec. 17.61. POWERS OF RECEIVER. (a) When a receiver is
2 appointed by the court under this subchapter, he shall have the
3 power to sue for, collect, receive, and take into his possession
4 all the goods and chattels, rights and credits, money, and effects,
5 lands, tenements, books, records, documents, papers, choses in
6 action, bills, notes, and property of every description, derived
7 by means of any practice declared to be illegal and prohibited
8 by this subchapter, including property with which such property
9 has been mingled if it cannot be identified in kind because of
10 the commingling, and to sell, convey, and assign the property and
11 hold and dispose of the proceeds under the direction of the court.
12 Any person who has suffered damages as a result of use or
13 employment of any unlawful practices and submits proof to the
14 satisfaction of the court that he has in fact been damaged, may
15 participate with general creditors in the distribution of the
16 assets to the extent he has sustained out-of-pocket losses. In
17 the case of a partnership or business entity, the receiver shall
18 settle the estate and distribute the assets under the direction
19 of the court. The court shall have jurisdiction of all questions
20 arising in the proceedings and may make any orders or judgments
21 required.

22 "(b) If the claims of consumers remain unsatisfied after
23 distribution of the assets, the court may order that all persons
24 who knowingly participated in the unlawful enterprise be held
25 jointly and severally liable to the extent of the unsatisfied
26 consumer claims if such person:

27 "(1) contributed substantial personal services,

1 money, credit, real, personal, or mixed property, or any other
2 thing of substantial value with the expectation of sharing in the
3 profits of the enterprise; and

4 "(2) had knowledge or should have had knowledge of
5 the unlawful purpose of the enterprise at the time such things
6 of value were contributed, or freely continued in the association
7 or other relationship after gaining knowledge of the unlawful
8 purpose of the enterprise.

9 "Sec. 17.62. REPORTS AND EXAMINATIONS. Whenever the
10 consumer protection division has reason to believe that a person
11 is engaging in, has engaged in, or is about to engage in any act
12 or practice declared to be unlawful by this subchapter or by
13 regulations issued under this subchapter, or when it reasonably
14 believes it to be in the public interest to conduct an
15 investigation to ascertain whether any person is engaging in, has
16 engaged in, or is about to engage in any such act or practice,
17 an authorized member of the division may:

18 "(1) require the person to file on the prescribed
19 forms a statement or report in writing, under oath or otherwise,
20 as to all the facts and circumstances concerning the alleged
21 violation and such other data and information as the consumer
22 protection division deems necessary;

23 "(2) examine under oath any person in connection
24 with this alleged violation;

25 "(3) examine any merchandise or sample of merchandise
26 deemed necessary and proper; and

27 "(4) pursuant to an order of the appropriate court,

1 impound any sample of merchandise that is produced in accordance
2 with this subchapter and retain it in the possession of the
3 division under the completion of all proceedings in connection
4 with which the merchandise is produced.

5 "Sec. 17.63. CIVIL INVESTIGATIVE DEMAND. (a) Whenever
6 the consumer protection division believes that any person may be
7 in possession, custody, or control of the original copy of any
8 documentary material relevant to the subject matter of an
9 investigation of a possible violation of this subchapter, an
10 authorized agent of the division may execute in writing and serve
11 on the person a civil investigative demand requiring the person
12 to produce the documentary material and permit inspection and
13 copying.

14 "(b) Each demand shall:

15 "(1) state the statute and section under which the
16 alleged violation is being investigated, and the general subject
17 matter of the investigation;

18 "(2) describe the class or classes of documentary
19 material to be produced with reasonable specificity so as to
20 fairly indicate the material demanded;

21 "(3) prescribe a return date within which the
22 documentary material is to be produced; and

23 "(4) identify the members of the consumer protection
24 division to whom the documentary material is to be made available
25 for inspection and copying.

26 "(c) A civil investigative demand may contain a requirement
27 or disclosure of documentary material which would be discoverable

1 under Rule 26 of the Federal Rules of Civil Procedure.

2 "(d) Service of any demand may be made by:

3 "(1) delivering a duly executed copy of the demand
4 to the person to be served or to a partner or to any officer or
5 agent authorized by appointment or by law to receive service of
6 process on behalf of that person;

7 "(2) delivering a duly executed copy of the demand
8 to the principal place of business in the state of the person to
9 be served;

10 "(3) mailing by registered mail or certified mail
11 a duly executed copy of the demand addressed to the person to be
12 served at the principal place of business in this state, or if
13 the person has no place of business in this state, to his principal
14 office or place of business.

15 "(e) Documentary material demanded pursuant to this section
16 shall be produced for inspection and copying during normal business
17 hours at the principal office or place of business of the person
18 served, or at other times and place as may be agreed on by the
19 person served and the consumer protection division.

20 "(f) No documentary material produced pursuant to a demand
21 under this section, unless otherwise ordered by a court for good
22 cause shown, shall be produced for inspection or copying by, nor
23 shall its contents be disclosed to any person other than the
24 authorized employee of the consumer protection division without
25 the consent of the person who produced the material. The consumer
26 protection division shall prescribe reasonable terms and conditions
27 allowing the documentary material to be available for inspection

1 and copying by the person who produced the material or any duly
2 authorized representative of that person. The consumer protection
3 division may use the documentary material or copies of it as it
4 determines necessary in the enforcement of this subchapter,
5 including presentation before any court. Any material which
6 contains trade secrets shall not be presented except with the
7 approval of the court in which the action is pending after adequate
8 notice to the person furnishing the material.

9 "(g) At any time before the return date specified in the
10 demand, or within 20 days after the demand has been served,
11 whichever period is shorter, a petition to extend the return date
12 for, or to codify or set aside the demand, stating good cause,
13 may be filed in the district court in the county where the parties
14 reside, or a district court of Travis County.

15 "(h) A person on whom a demand is served under this section
16 shall comply with the terms of the demand unless otherwise provided
17 by a court order.

18 "(i) Personal service of a similar investigative demand
19 under this section may be made on any person outside of this state
20 if the person has engaged in conduct in violation of this
21 subchapter. Such persons shall be deemed to have submitted
22 themselves to the jurisdiction of this state within the meaning
23 of this section.

24 "Sec. 17.64. PENALTIES. (a) Any person who, with intent
25 to avoid, evade, or prevent compliance, in whole or in part, with
26 Section 17.62 or 17.63 of this subchapter, removes from any place,
27 conceals, withholds, or destroys, mutilates, alters, or by any

1 other means falsifies any documentary material or merchandise or
2 sample of merchandise is guilty of a misdemeanor and on conviction
3 is punishable by a fine of not more than \$5,000 or by confinement
4 in the county jail for not more than one year, or both.

5 "(b) If a person fails to comply with a directive of the
6 consumer protection division under Section 17.62 of this subchapter
7 or with a civil investigative demand for documentary material
8 served on him under Section 17.63 of this subchapter, or if
9 satisfactory copying or reproduction of the material cannot be
10 done and the person refuses to surrender the material, the consumer
11 protection division may file in the district court in the county
12 in which the person resides, is found, or transacts business, and
13 serve on the person, a petition for an order of the court for
14 enforcement of Sections 17.62 and 17.63 of this subchapter. If
15 the person transacts business in more than one county, the petition
16 shall be filed in the county in which the person maintains his
17 principal place of business, or in another county agreed on by
18 the parties to the petition.

19 "(c) When a petition is filed in the district court in any
20 county under this section, the court shall have jurisdiction to
21 hear and determine the matter presented and to enter any order
22 required to carry into effect the provisions of Sections 17.62
23 and 17.63 of this subchapter. Any final order entered is subject
24 to appeal to the Texas Supreme Court. Failure to comply with any
25 final order entered under this section is punishable by contempt."

26 Sec. 2. Chapter 10, Title 79, Revised Civil Statutes of
27 Texas, 1925, as amended (Article 5069-10.01 et seq., Vernon's

1 Texas Civil Statutes), is repealed.

2 Sec. 3. If any provision of this Act or the application
3 thereof to any person or circumstances is held invalid, such
4 invalidity shall not affect other provisions or applications of
5 the Act which can be given effect without the invalid provision
6 or application, and to this end the provisions of this Act are
7 declared to be severable.

8 Sec. 4. The importance of this legislation and the crowded
9 condition of the calendars in both houses create an emergency and
10 an imperative public necessity that the constitutional rule
11 requiring bills to be read on three several days in each house
12 be suspended, and this rule is hereby suspended, and that this
13 Act take effect and be in force from and after its passage, and
14 it is so enacted.

COMMITTEE REPORT

Date 4-4-73

HONORABLE PRICE DANIEL, JR.

Speaker of the House of Representatives.

Sir:

We, your Committee on Business and Industry, to whom was referred H.R. No. 419, have had the same under consideration

and beg to report back with recommendation that it do pass, and be not printed.

Committee Substitute was recommended and is to be printed in lieu of the original bill.

~~The Committee recommends that this measure be considered for the Local and Consent Calendar.~~

House sponsor of Senate measure: _____

The measure was reported from Committee by the following record vote:

12 ayes
0 nays
_____ present, not voting
_____ absent

Linn Willin
Chairman.

This measure proposes new law.

COMMITTEE ON BUSINESS AND INDUSTRY

BILL ANALYSIS

Background Information and Purpose of this Bill: The bill originated in Attorney General John Hill's office and is a primary party of his consumer protection program. It strikes directly at the inequities now existing in consumer protection legislation, and will provide remedies under which the Attorney General's Office can properly determine between premeditated practiced deception and honest error, thereby providing both proof and penalty to be exercised by his office. Presently, the Attorney General's office gets thirty to forty complaints per day against fraudulent or deceptive practices. This bill would provide a means by which the consumer could sue and recover damages plus attorneys fees, if the consumer can adequately show that the Act has been violated. Under our system as it now stands, a suit can be filed by a consumer against a person or organization committing an act, but the consumer must prove common law fraud. The present conditions provide only for the Attorney General's office to bring in a restraining order and limits their ability to prosecute. The common law remedy is not adequate for a consumer to recover the loss, thereby making this bill a major step in the direction of providing the consumer, through the Attorney General's office, with the necessary tools for equitable recovery subject to, of course, a ruling in favor of the consumer.

Section by Section Analysis:

Section 1. Chapter 17, Business & Commerce Code, as amended, is amended by adding subchapter E to read as follows: "Subchapter E. Deceptive Trade Practices and Consumer Remedies." This part of the bill discusses in detail in Sections 17.41 of Subchapter E, through Section 17.63 of Subchapter E, the details of the addition to the code as amended.

Section 17.41: Short Title.

Section 17.42: Waiver. No consumer may waive his legal rights under the law.

Section 17.43: Makes the remedies here in addition to existing remedies.

Section 17.44: Provides for liberal construction and application for the purposes of the bill, and details what the consumer is protected against.

Section 17.45: Definitions.

Section 17.46: Describes what deceptive trade practices are unlawful.

Section 17.47: Restraining Orders. Sets forth in great detail the manner by which the Consumer Protection Division shall go about obtaining restraining orders, including of course, temporary or permanent injunctions, further providing penalties for the violations of restraining orders in limits, awarding of civil penalties to be applicable only to those violations occurring prior to the awarding of the restraining order or injunction.

Section 17.48: Sets forth the duties of the District, County and City Attorneys as relating to the enforcement of this Act.

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Section 17.49: Specific exemptions from this Act include newspaper, magazine, or telephone directory, or broadcast station, or billboard, when an advertisement has been placed in one of these without the knowledge of the previous mentioned media as to the lawfulness of a specific act which is to be carried out by the firm doing the advertising. This section further points out that an act or practice is not authorized simply because it is not specifically mentioned in this Act or in Federal Laws. *step*

Pg 43 Section 17.50: Relief for Consumers. This particular Section points out the method and manner of redress to a consumer who has been damaged by one of the practices considered unlawful by this bill. This includes restoration of property punitive damages, three times the amount of actual damages plus court costs and attorneys fees and any other relief which the court deems proper. However, if the court finds that an action in this section was groundless and brought for the purpose of harrassment, the court may award the defendant reasonable attorneys fees in relation to the amount of work expended.

Section 17.51: Class Actions. This section provides that any defendant may bring a class action suit on behalf of himself and other consumers who have been damaged similarly. Redress for class actions is similar to that of individuals.

Section 17.52: Class Action Procedures spelled out here to provide uniformity.

Section 17.53: Preliminary notice must be given at least thirty days prior to the commencement of a suit for damages under section 17.53 of this subchapter and the consumer must notify the intended defendant of his complaint and make demand that the defendant provide relief to the consumer and others similarly situated. This section further points out the manner in which this must be done.

Section 17.54: Provides the damages shall not be awarded if *an* action complained of, results from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid error, or if restitution has been made.

Section 17.55: Promotional Material. This particular area provides that sellers of goods or services may obtain damages against a third party employed to provide advertising for their goods, when that third party violates this act and subsequent action results in the seller having to make restitution to the customer.

Section 17.56: Venue: The county in which the person against whom the suit is brought resides, has his principal place of business, or is doing business.

Section 17.57: Discusses the manner in which subpoenas may be issued.

Section 17.58: This provision allows for voluntary compliance which must be in writing and restitution for any previous violations must be made with the consideration that the assurance of voluntary compliance shall not be considered admission of prior violation of this subtitle. This section further provides that voluntary compliance does not limit reopening of complaints, previous in nature, nor does it limit individual rights of action, except as the terms of this Act so limit.

Section 17.59: This provision details the powers the receiver may have, having been appointed by the court to administer reparations. It further provides that if claims of the consumer have not been met as specified all persons who participated knowingly in terms of contributions of substantial personal services, money, credit, real, personal, or mixed property, or anything of substantial value may be held jointly and severally liable *step*

to the extent of the unsatisfied consumer claim. If they were a part of the venture to the extent of sharing in the profits of the enterprise, and had knowledge or should have had knowledge of the unlawful purpose of the enterprise at the time such things of value were contributed, or freely continued in the association or other relationships after gaining knowledge of the unlawful purpose of the enterprise, then they are also subject to this Act.

Section 17.60: This provision provides that if the Consumer Protection Division feels anyone has violated this Act, they may require a report and the person or persons may be examined under oath about the facts and circumstances concerning the alleged violation. They may further, with the approval of the court, impound any sample of merchandise that is produced in accordance with this subchapter.

Section 17.61: Provides for civil investigative demands which would allow the Consumer Protection Division to require the person, or persons, investigated to produce documentary material and permit inspection relative thereto, with necessary copies to be made on request. This is not limited to persons residing within the state if their conduct has been in violation of this subchapter within the State of Texas.

Section 17.62: Penalties. (a) Defines the circumstances under which any person attempting to avoid, evade or prevent compliance with this act or conceals, withholds, destroys, mutilates or otherwise falsifies documentary material or merchandise is thereby guilty of a misdemeanor. (b) Describes the penalties for failing to comply with Sec. 17.60 or with any civil investigation demand for documentary material served on him. It provides that the consumer protection division may seek redress under the measure provided in the bill. (c) Provides where the jurisdiction on the case will lie and where the final appeal will be with failure to comply to the request being punishable by contempt.

Section 17.63. Application. Provides that only acts committed since the enactment of this bill will be under the power granted to the Attorney General under Chapter 10, Title 79, Revised Civil Statutes of the State of Texas, 1925, as amended.

Section 2.(a). Amends Section 13, Art. 21.21, Texas Insurance Code as follows: Section 13 - Rules and Regulations. The first part of this is what was previously the entire section on rules and regulations. It is now titled Section 13.

(a) Authorizes Board to promulgate Rules & Regulations.

~~Section 2(b).~~ Provides that a petition by 100 persons properly signed with proper evidence may be used to question an act which is considered to be false, misleading or deceptive to the insurance buying public. ~~To require the insurance board to act within thirty days after receipt of the petition.~~ Within that thirty days the board must act to either deny the petition or initiate hearings.

~~Section 2(c).~~ Requires the State Board of Insurance to state the reasons for why denial has been expressed. Denial is possible under several circumstances.

~~Section 2(d).~~ The board may ~~on response to the petition~~ hold a public hearing ~~to the chairman the validity the data and testimony of the information available~~ in response to the petition.

~~Section 2(e).~~ Anyone contesting a judgment or regulation set up by the State board may appeal that judgment in the District Court of Travis County for declaratory judgment. ~~The board shall be party to the actions~~

(f) Sets out the six instances in which the Board's action may be invalidated.

Sec. 2. (b) Amends Section 7,
Article 21.21, as follows:

Sec. 7. Cease + Desist Orders. (a)
Authorizes the Board to issue cease +
desist orders ~~upon~~ against persons
violating the provisions of this Act or
the Board's rules or regulations.

(b) No change from existing law.

(c) Provides for a ~~fine~~ civil
penalty of not more than \$1,000 per
day, not to exceed a total of \$5,000,
for violation of a cease + desist order.

(d) Provides civil penalties apply
only to violations prior to the
penalty order.

Sec. 2. (c) Amends ~~Article~~ Article
21.21 by adding New Sections 14
through 21 as follows:

~~Section 2 (b) Amended Section 7, Article 21.21, to read as follows:~~

~~Section 2 (b) Cease and Desist Orders. May be issued under this bill by the State Board of Insurance for violation of Sec. 17.46 of the Business and Commerce Code and to issue a civil penalty for a violation of the cease and desist order of \$1,000.00 per violation and not to exceed \$5,000.00~~

~~Section 2 (c) and Sections 14 through 24 to Article 21.21 Insurance Code.~~ Section 14. Provides for an administrative class action in which the board may order an insurer or insurance agent in violation of Article 21.21, regulations issued under Article 21.21, or Section 17.46, Business and Commerce Code, to refund premiums to persons induced to pay the premium as a result of the violation. ~~Section 15, of Article 21.21~~ Relates to the Attorney General filing a suit against a member of the insurance industry on the request of the State Board of Insurance and is substantially the same as Section 17.47, Business and Commerce Code. ~~Now Sections 16 and 17 of Article 21.21~~ Provides a private right of action for an individual ~~and for class actions~~ for a violation of Article 21.21, Insurance Code, regulations issued under that Article, or Section 17.46, Business and Commerce Code, and is substantially the same as Sections 17.50 and 17.51, Business and Commerce Code, ~~respectively~~. A private class action is stayed if an administrative class action on the same subject and same defendant has been instituted by the State Board of Insurance under Section 14 of Article 21.21.

~~Section 17.~~ *Defines the procedures available for class actions.* ~~Now Section 18 of Article 21.21~~ Sets out the procedure for a private class action and is the same as Section 17.52, Business and Commerce Code. ~~Now Section 19, of Article 21.21~~ Relates to the giving of notice to the proposed defendant 30 prior to instituting a class action for damages. It is substantially the same as Section 17.53, Business and Commerce Code. ~~Now Section 20, of Article 21.21~~ Provides for the bona fide error defense in class actions and is the same as Section 17.54, Business and Commerce Code.

~~Now Section 21, of Article 21.21~~ Puts venue for proceedings under this Article in Travis County if the State Board of Insurance is a party to the suit. ~~Now Section 22, of Article 21.21~~ Allows the State Board of Insurance to accept assurance of voluntary compliance for violations of Article 21.21, regulations issued under that Article, or Section 17.46, Business and Commerce Code. It is substantially the same as Section 17.58, Business and Commerce Code.

~~Now Section 23, of Article 21.21~~ Provides that judgments awarded under this Article must be paid from the capital or surplus funds of the offending insurance company. This is to give the policyholders priority in any case of insolvency arising from a suit under this Article. ~~Now Section 24 of Article 21.21~~ Provides that the provisions of this Act apply only to acts or practices occurring after the effective date of the Act.

Section 3. Repeals Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-10.01 et seq., Vernon's Texas Civil Statutes.

Section 4. Severability Clause.

Section 5. Emergency Clause.

ACTION TAKEN BY THE COMMITTEE:

This bill was posted on March 29, 1973 at 3:30 P.M. providing the regular five day notice and was heard at the 9:00 A.M. meeting on Wednesday, April 4, 1973 on the Committee on Business and Industry. This bill was *Reported* passed to the House *favorably* as amended, with *the* recommendation that it do pass *by a* and be printed by a vote of 12-0. *Roll call vote reflecting 12 ayes and no nays.*

AMENDMENT NO. _____

BY _____

Amend the Engrossed Copy of H.B. No. 417 as follows:

- ✓ (1) On page 6, line 5, strike the word "guarentee" and insert in lieu thereof "guaranty";
- ✓ (2) On page 6, line 10, strike the word "these" and insert in lieu thereof "those";
- ✓ (3) On page 9, line 4, strike the word "on" and insert in lieu thereof "if";
- ✓ (4) On page 9, line 16, stike the word "the" between the words "in" and "cases" and insert in lieu thereof "these";
- ✓ (5) On page 10, line 26, and page 11, line 4, strike "or regulations issued under this subchapter";
- ✓ (6) On page 11, line 12, insert "Act," following "Commission";
- ✓ (7) On page 25, line 9, strike the word "under" and insert in lieu thereof "until";
- ✓ (8) On page 32, line 17, insert "[Act]" following the word "Code";
- ✓ (9) On page 32, line 18, insert "shall" between "and" and "issue";
- ✓ (10) On page 36, line 8, strike the word "Article" and insert in lieu thereof "Section";
- ✓ (11) On page 36, line 11, strike the word "by" and insert in lieu thereof "to".

APR 11 1973

DATE _____

READ AND ADOPTED

Dorothy Hallman
Chief Clerk
House of Representatives

JK
OGV

(7)

Hale

Amend Com. Amend No. 1 to HB 417
by adding a new subsection to the
quoted Sec. 11.46, to be known as
subsection (20), to read as follows:

(20) selling or offering to sell,
either directly or associated with the
sale of goods or services, a right
of participation in a multi-level
distributorship.

As used ^{herein} ~~in this Act~~, "multi-level distributorship"
means a sales plan for the distribution of goods or services in
which promises of rebate or payment are made to individuals, con-
ditioned upon those individuals recommending or securing additional
individuals to assume positions in the sales operation, and
where the rebate or payment is not
exclusively conditioned on or in relation
to proceeds from the retail sales of goods.

APR 10 1973

DATE

READ AND ADOPTED

Joseph L. Coleman
Chief Clerk
House of Representatives

③

Amendment by Geiger

Amend Committee Amendment
#1 to HB 417 by striking
line 27, of page 22 and
substituting therefor the
following:

"under the ~~Pro~~ Texas Rules
of Civil Procedure"

APR 10 1973

DATE

READ AND ADOPTED

Dorothy Hallman

Chief Clerk
House of Representatives

JHF

[Handwritten mark]

COMMITTEE AMENDMENT NO. 1

BY Lonnie L. Linn

Amend H.B. 417, as introduced, by striking all below the enacting clause and substituting the following:

"Section 1. Chapter 17, Business & Commerce Code, as amended, is amended by adding Subchapter E to read as follows:

"SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND
CONSUMER REMEDIES

"Sec. 17.41. SHORT TITLE. This subchapter may be cited as the Deceptive Trade Practices-Consumer Remedies Act.

"Sec. 17.42. WAIVER; PUBLIC POLICY. Any waiver by a consumer of the provision of this subchapter is contrary to public policy and is unenforceable and void.

"Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

"Sec. 17.44. CONSTRUCTION AND APPLICATION. This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty, and to provide efficient and economical procedures to secure such protection.

"Sec. 17.45. DEFINITIONS. As used in this subchapter:

"(1) "Goods" means tangible chattels bought for use primarily for personal, family, or household purposes, including certificates or coupons exchangeable for such goods, and including goods which, at the time of the sale or subsequently, are to be affixed to real property or to become a part of the real property whether or not severable.

DATE

APR 10 1973

READ AND ADOPTED

as amended,
Donna Hallman
Chief Clerk
House of Representatives

"(2) "Services" means work, labor, and services for other than commercial or business use, including services furnished in connection with the sale or repair of goods.

"(3) "Person" means an individual, partnership, corporation, association, or other group, however organized.

"(4) "Consumer" means an individual who seeks or acquires by purchase or lease, any goods or services for personal, family, or household purposes.

"(5) "Merchant" means a party to a consumer transaction other than a consumer.

"(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

"(7) "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

"(8) "Consumer protection division" means the antitrust and consumer protection division of the attorney general's office.

"(9) "Knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

"Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a)

False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

"(b) The term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

"(1) passing off goods or services as those of another;

"(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

"(3) causing confusion or misunderstanding as to affiliations, connection, or association with, or certification by, another;

"(4) using deceptive representations or designations of geographic origin in connection with goods or services;

"(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

"(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

"(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

of
~~or~~ (8) disparaging the goods, services, or business
another by false or misleading representation of facts;

"(9) advertising goods or services with intent not
to sell them as advertised;

"(10) advertising goods or services with intent not
to supply a reasonable expectable public demand, unless the
advertisements disclosed a limitation of quantity;

"(11) making false or misleading statements of fact
concerning the reasons for, existence of, or amount of price
reductions;

"(12) representing that an agreement confers or
involves rights, remedies, or obligations which it does not have
or involve, or which are prohibited by law;

"(13) knowingly making false or misleading statements
of fact concerning the need for parts, replacement, or repair
service;

"(14) misrepresenting the authority of a salesman,
representative or agent to negotiate the final terms of a consumer
transaction;

"(15) basing a charge for the repair of any item in
whole or in part on a guaranty or warranty instead of on the value
of the actual repairs made or work to be performed on the item
without stating separately the charges for the work and the charge
for the warranty or guaranty, if any;

"(16) disconnecting, turning back, or resetting the
odometer of any motor vehicle so as to reduce the number of
miles indicated on the odometer ~~gauge~~;

"(17) advertising of any sale by fraudulently representing that a person is going out of business;

"(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

"(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Section 2.314 through 2.318 of the Business and Commerce Code to involve obligations in excess of these which are appropriate to the goods; or

② → "(c) It is the intent of the legislature that in construing Subsection (a) of this section the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a) (1) of the Federal Trade Commission Act 15 U.S.C.A. 45(a) (1).

"(d) The omission of a given act or practice from Subsection (b) of this section shall not limit the courts from determining that the act or practice is unlawful under this subchapter.

"Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or

practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of such method, act or practice. Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least 7 days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances; and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made. The consumer protection division may bring any action under this section against a licensed insurer or insurance agent for a violation of this subchapter, Article 21.21, Texas Insurance Code, or the rules and regulations of the State Board of Insurance issued under Article 21.21, Texas Insurance Code, only on the written request of the State Board of Insurance or the Commissioner of Insurance.

"(b) An action brought under Subsection (a) of this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, is doing business, or in the district court of the county where the transaction occurred or any substantial portion of the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary or permanent injunctions to restrain and prevent violations of this subchapter and the injunctions shall be issued without bond.

"(c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by this subchapter, may request a civil penalty of not more than \$2,000 per violation not to exceed a total of \$10,000 to be paid to the State.

"(d) The court may make such additional order or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means of any act or practice restrained. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets on a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

"(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in the cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

"(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

"Sec. 17.48. DUTY OF DISTRICT AND COUNTY ATTORNEY. (a)

It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

"(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions seeking injunctive relief under this subchapter, after complying with the prior contact provisions of subsection (a) of Section 17.48 of this subchapter. On request, the consumer protection division shall assist the district or county attorney in any action taken under this subchapter. If an action is prosecuted by a district or county attorney alone, he shall make a full report to the consumer protection division including a final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the Commissioner of Insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or Commissioner of Insurance.

"Sec. 17.49. EXEMPTIONS. (a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station or billboard, wherein any advertisement in violation of this subchapter or regulations issued under this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter or regulations issued under this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service.

Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

"(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

"Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action if he has been adversely affected by any of the following:

"(1) the use or employment by any person of an act or practice declared to be unlawful by Section 17.46 of this subchapter;

"(2) a failure by any person to comply with an express or implied warranty;

"(3) any unconscionable action or course of action by any person; or

"(4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code.

"(b) In a suit filed under this section, each consumer who prevails may obtain:

"(1) three times the amount of actual damages plus court costs and attorneys' fees reasonable in relation to the amount of work expended;

"(2) an order enjoining such acts or failure to act;

"(3) punitive damages;

"(4) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

"(5) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee.

"(c) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the amount of work expended, court costs, and punitive damages.

"Sec. 17.51. CLASS ACTIONS. (a) If a consumer has been damaged by an unlawful method, act, or practice contained in Subsection (b), Section 17.46 of this subchapter, an act or practice in violation of Article 21.21, Texas Insurance Code, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, or by an act or practice or type of act or practice previously declared unlawful, deceptive, or unconscionable to the consumer by a final judgment of an appellate court of proper jurisdiction and venue in this state that was reported officially, a consumer may bring an action on behalf of himself and other consumers if the unlawful act or practice has caused damage to the other consumers who are similarly situated, to recover damages and relief as provided in this subchapter.

"(b) A plaintiff who prevails on a class action under this subchapter may recover:

"(1) court costs and attorneys' fees reasonable in relation to the amount of work expended in addition to actual / damages;

"(2) an order enjoining the act or failure to act;

"(3) punitive damages;

"(4) any orders which may be necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

"(5) any other relief which the court deems proper including the appointment of a receiver or revocation of a license or certificate to engage in business in this state if the judgment has not been satisfied within six months of the date of issuance of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee.

"(c) On a finding by the court that an action under this section was brought in bad faith or for purposes of harassment, the court may award to the defendant reasonable attorneys' fees in relation to the work expended, court costs, and punitive damages.

"(d) An action under this section may not be maintained or shall be stayed if proceedings regarding an administrative class action under Section 14 of Article 21.21, Insurance Code, have been initiated regarding the same acts or practices and the same defendant in the action under this section.

"Sec. 17.52. CLASS ACTION: PROCEDURE. (a) The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

"(1) the class is so numerous that joinder of all members is impracticable;

"(2) there are questions of law or fact common to the class;

"(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

"(4) the representative parties will fairly and adequately protect the interests of the class.

"(b) An action may be maintained as a class action if the prerequisites of Subsection (a) of this section are satisfied and in addition:

"(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

"(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

"(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

"(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

"(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

"(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

"(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

"(C) the desirability or undesirability of controversy concentrating the litigation of the claims in the particular forum; and

"(D) the difficulties likely to be encountered in the management of a class action.

"(c) In construing this section, the courts of Texas shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure.

"(d) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action. An order under this subsection may be altered or amended before a decision on the merits. An order determining that the action may or may not be brought as a class action is an interlocutory order which is appealable and the procedures provided in Rule 385, Texas Rules of Civil Procedure, apply.

"(e) If the action is permitted as a class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

"(f) The notice shall contain a statement that:

"(1) the court will exclude the member notified from the class if he so requests by a specified date;

"(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

"(3) any member who does not request exclusion, if he desires, may enter an appearance through counsel.

"(g) A class action may not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in such manner as the court directs.

"(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall be construed and applied accordingly.

"(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

"(j) In the conduct of a class action the court may make appropriate orders:

"(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

"(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members or to the attorney general of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

"(3) imposing conditions on the representative parties or on intervenors;

"(4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

"(5) dealing with similar procedural matters.

"(k) The filing of a suit under this section tolls the statute of limitations for bringing a suit by an individual under Section 17.50 of this subchapter. An order of the court denying the bringing of a suit as a class action does not affect the ability of an individual to bring the same or a similar suit under Section 17.50 of this subchapter.

"Sec. 17.53. PRELIMINARY NOTICE. (a) At least 30 days prior to the commencement of a suit for damages under Section 17.51 of this subchapter, the consumer must notify the intended defendant of his complaint and make demand that the defendant provide relief to the consumer and others similarly situated.

"(b) The notice must be in writing and sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, the intended defendants' principal place of business in this state, or if neither will effect notice, to the office of the Secretary of State of Texas.

"(c) An action for injunctive relief under Section 17.51 of this subchapter may be commenced without compliance with Subsection (a) of this section. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with the provisions of Subsection (a) of this section, the consumer may amend his complaint without leave of court to include a request for damages.

"(d) No damages may be awarded to a consumer class under this section if within 30 days of receipt of the notice the intended defendant furnished the consumer, by certified or registered mail, return receipt requested, a written offer of settlement. The offer of settlement must include a statement that:

"(1) all consumers similarly situated have been adequately identified or a reasonable effort to identify such other consumers has been made, and a description of the class so identified and the method employed to identify them;

"(2) all consumers so identified have been notified that upon their request the intended defendant will provide relief to the consumer and all others similarly situated, and a complete explanation of the relief being afforded and a copy of the notice or communication which the intended defendant is providing to the members of the class;

"(3) the remedy requested by the consumer has been, or within a stated reasonable period of time, will be given; and

"(4) the practice complained of has ceased.

"(e) Attempts to comply with the provisions of this section by a person receiving a demand shall be an offer to compromise and shall be inadmissible as evidence. Attempts to comply with a demand shall not be considered an admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the provisions of this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of this section.

"Sec. 17.54. DAMAGES: DEFENSE. No award of damages may be given in any action filed under Section 17.51 of this subchapter if the defendant:

"(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any error; and

"(2) made restitution of any consideration received from any member of the class.

"Sec. 17.55. PROMOTIONAL MATERIAL. If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

"(1) the seller received the advertisements or promotional material from the third party;

"(2) the seller's only action with regard to the advertisements or promotional material was to disseminate the material; and

"(3) the seller has ceased disseminating the material.

"Sec. 17.56. VENUE. An action brought under Section 17.50 or 17.51 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or is doing business.

"Sec. 17.57. SUBPOENAS. The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

"Sec. 17.58. VOLUNTARY COMPLIANCE. (a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business, or in the district court of Travis County.

"(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this subchapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this subchapter.

"(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this subchapter. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this subchapter.

"(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this subchapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

"Sec. 17.59. POWERS OF RECEIVER. (a) When a receiver is appointed by the court under this subchapter, he shall have the power to sue for, collect, receive, and take into his possession all the goods and chattels, rights and credits, money, and effects,

lands, tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be illegal and prohibited by this subchapter, including property with which such property has been mingled if it cannot be identified in kind because of the commingling, and to sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court. Any person who has suffered damages as a result of use or employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in the proceedings and may make any orders or judgments required.

'(b) If the claims of consumers remain unsatisfied after distribution of the assets, the court may order that all persons who knowingly participated in the unlawful enterprise be held jointly and severally liable to the extent of the unsatisfied consumer claims if such person:

'(1) contributed substantial personal services, money, credit, real, personal, or mixed property, or any other thing of substantial value with the expectation of sharing in the profits of the enterprise; and

'(2) had knowledge or should have had knowledge of the unlawful purpose of the enterprise at the time such things of value were contributed, or freely continued in the association or other relationship after gaining knowledge of the unlawful purpose of the enterprise.

1'Sec. 17.60. REPORTS AND EXAMINATIONS. Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

1'(1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;

1'(2) examine under oath any person in connection with this alleged violation;

1'(3) examine any merchandise or sample of merchandise deemed necessary and proper; and

1'(4) pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division under the completion of all proceedings in connection with which the merchandise is produced.

\\ This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

\\'Sec. 17.61. CIVIL INVESTIGATIVE DEMAND. (a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any

documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying. This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

'(b) Each demand shall:

'(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

'(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

'(3) prescribe a return date within which the documentary material is to be produced; and

'(4) identify the members of the consumer protection division to whom the documentary material is to be made available for inspection and copying.

'(c) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under ~~Rule 26~~ of the ^{Illinois} ~~Federal~~ Rules of Civil Procedure.

'(d) Service of any demand may be made by:

'(1) delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or

agent authorized by appointment or by law to receive service of process on behalf of that person;

'(2) delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served;

'(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business in this state, or if the person has no place of business in this state, to his principal office or place of business.

'(e) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and place as may be agreed on by the person served and the consumer protection division.

'(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The consumer protection division may use the documentary material or copies of it as it determines necessary in the enforcement of this subchapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

'(g) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to codify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

'(h) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

'(i) Personal service of a similar investigative demand under this section may be made on "any person outside of this state if the person has engaged in conduct in violation of this subchapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

'Sec. 17.62. PENALTIES. (a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in the county jail for not more than one year, or both.

'(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and

serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

'(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

'Sec. 17.63. APPLICATION. The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended, prior to the effective date of this subchapter.'

Sec. 2. (a) Amend Section 13, Article 21.21, Texas Insurance Code, to read as follows:

'Sec. 13. Rules and Regulations. (a) The State Board of Insurance is authorized to promulgate and may promulgate and enforce reasonable rules and regulations and may order such provision as is necessary in the accomplishment of the purposes of this Article and Article 21.20, including, but not limited to, such express provisions within the purposes of these Articles as it deems necessary or as is required to affect necessary uniformity with the laws of other states or the United States or in conformity with the adopted procedures of the National Association

of Insurance Commissioners notwithstanding any previous definition or interpretation of terms used in these articles had in or derived from the common law or other statutory law of this State.

'(b) A petition may be submitted to the Board to adopt, amend, or repeal a regulation. The petition must be signed by 100 interested persons and supported by evidence that a particular act or practice has been or could be false, misleading or deceptive to the insurance buying public, or that an act or practice declared to be false, misleading, or deceptive by a regulation of the Board is not in fact false, misleading, or deceptive. Within 30 days after receipt of the petition the Board must either deny the petition or initiate hearing proceedings under this section.

'(c) On denial of the petition the Board must state the reason or reasons for denial in writing. Denial is expressly authorized if the action sought by the petition would destroy uniformity with the laws of other states or of the United States or would not be in conformity with the adopted procedures of the National Association of Insurance Commissioners.

'(d) If in response to the petition the Board determines to hold a hearing, such hearing shall be open to the public and any person may present testimony, data, or other information in writing or orally to the Board regarding the acts or practices under consideration.

'(e) A person aggrieved by the denial of the hearing under subsection (b) of this Section or by the adoption, amendment, or repeal of a regulation or failure to issue a regulation under this Section, may file a petition in a district court of Travis County for a declaratory judgment on the validity or applicability of a regulation adopted, amended, or repealed under this section or on the denial of a hearing under subsection (b) of this section. The Board shall be made a party to the action. In a suit under this subsection the district court may issue injunctions.

'(f) The action of the Board in adopting, amending, repealing, or failing to adopt a regulation or denying a hearing may be invalidated only if it is found that it:

'(1) violates a constitutional or state statutory provision;

'(2) exceeds the statutory authority of the Board;

'(3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;

'(4) is so vague that it does not establish sufficiently definite standards with which conduct can be conformed;

'(5) is made on unlawful procedure; or

'(6) is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record as submitted.'

①(b) Amend Section 7, Article 21.21, Insurance Code, to read as follows:

'Sec. 7. Cease and Desist Orders. (a) If, after [such] hearing under the terms of Section 6 of the Act, the Board shall determine that the method of competition or the act or practice in question is defined in Section 4 of this Article, or rules or regulations issued under this Article, or in Section 17.46 of the Business and Commerce Code and that the person complained of has engaged in such method of competition, act or practice in violation of this Article or rules and regulations issued under this Article or of the Deceptive Trade Practices - Consumer Remedies Act as specified in Section 17.46 of the Business and Commerce Code, it shall reduce its findings to writing and issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, and/or practice.

'(b) Until a petition appealing from such order shall have been filed in a district court of Travis County, Texas, in accordance with Subchapter F of Chapter 21 of the Insurance Code of this state, or any amendment thereof, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part any order issued under this section.

'(c) Any person who violates the terms of a cease and desist order under this section shall be given notice to appear and show cause, at a hearing to be held in conformity with Section 6 of this Article, why he should not forfeit and pay to the state a civil penalty of not more than \$1,000 per violation and not to exceed a total of \$5,000. In determining whether or not a cease and desist order has been violated, the Board shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the order.

'(d) An order of the Board awarding civil penalties under Subsection (c) of this section applies only to violations of this order incurred prior to the awarding of the penalty order.'

①(c) Amend Article 21.21, Insurance Code by adding Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 to read as follows:

'Sec. 14. Administrative Class Action. (a) In connection with the issuance of a cease and desist order as provided in Section 7 of this article or upon application of any aggrieved person, the Board may, after notice and hearing as provided in Section 6 of this article, in connection with the issuance of a cease and desist order resulting from a finding that an insurer has engaged in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article or Section 17.46, Business and Commerce Code, or upon

finding by the Board that the aggrieved person and persons similarly situated were induced to purchase a policy of insurance as a result of the insurer engaging in a method of competition, act or practice in violation of this article, rules or regulations issued under this Article or Section 17.46, Business and Commerce Code, the Board may require the insurer to account for all premiums collected for policies issued during the immediately preceding two years in connection with such acts in violation of this article and require: (i) such insurer to give notice to all persons from whom such premiums were collected, and (ii) to refund the total of all premiums collected from each such person, electing to accept a premium refund in exchange for cancellation of the policy of insurance issued. Premiums so refunded shall be net of policy benefits actually paid by such insurer while the policy of insurance was in force. The Board shall specify a reasonable time within which the insurer shall be required to make such premium refunds.

'(b) If an insurer fails to comply with the Board's requirement to refund such premiums within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for refund of premiums. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the Court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement; the Court shall enter an appropriate order to enforce such Board order. The Court may enforce its order through contempt proceedings.

'(c) Compliance or attempts to comply with the Board's requirement to refund premiums shall be an offer to compromise and shall be inadmissible as evidence. Compliance or attempts to comply with the Board's requirement for refund of premium shall not be considered as admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the Board's requirements of refund or premium may be introduced by the defendant for the purpose of establishing good faith or to show compliance with the Board's requirement.①

'Sec. 15. Injunctions. (a) If the Board has reason to believe that any person in the insurance business in this State is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this Article or rules or regulations issued under this Article or by Section 17.46 of the Business and Commerce Code, and that proceedings would be in the public interest, the Board may request the Attorney General to bring an action in the name of the state against the person to restrain by temporary or permanent injunction the use of such method, act, or practice.

'(b) An action brought under Subsection (a) of this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, is doing business, or in the district court of the county where the transaction occurred or any substantial portion of the transaction occurred, or in a district court of Travis County. The court may issue appropriate temporary or permanent injunctions, and the injunctions shall be issued without bond;

'(c) In addition to the request for a temporary or permanent injunction in a proceeding brought under Subsection (a) of this section, the Attorney General, on a finding by the court that the defendant has engaged or is engaging in a practice declared to be unlawful by Article 17.46 of the Business and

Commerce Code, this Article, or rules or regulations issued under this Article, may request a civil penalty of not more than \$2,000 per violation and not to exceed a total of \$10,000 to be paid by the state.

'(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or restoration of money or property, real or personal, which may have been acquired by means of any act or practice restrained. Damages may not include any damages incurred beyond a point two years prior to the institution of the action.

'(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in such cases, the Attorney General with prior notice to the Board, acting in the name of the state, may petition for recovery of civil penalties under this section.

'(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

'Sec. 16. Relief Available to Injured Parties. (a) Any person who has been injured by another's engaging in any of the practices declared in Section 4 of this Article or in rules or regulations lawfully adopted by the Board under this Article

to be unfair methods of competition and unfair and deceptive acts or practices in the business of insurance or in any practice defined by Section 17.46 of the Business and Commerce Code as an unlawful deceptive trade practice may maintain an action against the company or companies engaging in such acts or practices.

'(b) In a suit filed under this section, any plaintiff who prevails may obtain:

'(1) three times the amount of actual damages plus court costs and attorneys' fees reasonable in relation to the amount of work expended;

'(2) an order enjoining such acts or failure to act;

'(3) punitive damages;

'(4) any other relief which the Court deems proper.

'(c) On a finding by the Court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the Court may award to the defendant reasonable attorneys' fees in relation to the amount of work expended.

'(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

'Sec. 17. Class Actions. (a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Section 4 of this Article or by the rules and regulations lawfully adopted by the Board under this Article or by any practice defined by Section 17.46 of the Business and Commerce Code as an unlawful deceptive trade practice, the Board may request the Attorney General to bring a class action, or the individual damaged may bring an action on behalf of himself and others similarly situated, to recover damages and relief as provided in this Section.

'(b) A plaintiff who prevails in a class action under this section may recover:

'(1) court costs and attorneys' fees reasonable in relation to the amount of work expended in addition to actual damages;

'(2) an order enjoining the act or failure to act;

'(3) punitive damages;

'(4) any other relief which the Court deems proper.

'(c) On a finding by the Court that an action under this section was brought by an individual plaintiff in bad faith or for the purpose of harassment, the Court may award to the defendant reasonable attorneys' fees in relation to the work expended, court costs, and punitive damages.

'(d) In an action under this section, damages may not include any damages incurred beyond a point two years prior to the institution of the action.

'(e) An action under this section may not be maintained or shall be stayed if proceedings regarding an administrative class action under Section 14 of this Article have been initiated regarding the same acts or practices and the same defendant in the action under this section.⑥

'Sec. 18. Class Action: Procedure. (a) The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

'(1) the class is so numerous that joinder of all members is impracticable;

'(2) there are questions of law or fact common to the class;

'(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

'(4) the representative parties will fairly and adequately protect the interests of the class.

'(b) An action may be maintained as a class action if the prerequisites of Subsection (a) of this section are satisfied and in addition:

'(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

'(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

'(B) adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

'(2) the party opposing the class has acted or refused to act on ground generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

'(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

'(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

'(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

'(C) the desirability or undesirability of controversy concentrating the litigation of the claims in the particular forum; and

'(D) the difficulties likely to be encountered in the management of a class action.

'(c) In construing this section, the courts of Texas shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure.

'(d) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action. An order under this subsection may be altered or amended before a decision on the merits. An order determining that the action may or may not be brought as a class action is an interlocutory order which is appealable and the procedures provided in Rule 385, Texas Rules of Civil Procedure, apply.

'(e) If the action is permitted as a class action, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

'(f) The notice shall contain a statement that:

'(1) the court will exclude the member notified from the class if he so requests by a specified date;

'(2) the judgment, whether favorable or not, will include all members who do not request exclusion; and

'(3) any member who does not request exclusion, if he desires, may enter an appearance through counsel.

'(g) A class action may not be dismissed, settled, or compromised without the approval of the court, and notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in such manner as the court directs.

'(h) When appropriate, an action may be brought or maintained as a class action with respect to particular issues

or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this section shall be construed and applied accordingly.

'(i) The judgment in a class action shall describe those to whom the notice was directed and who have not requested exclusion and those the court finds to be members of the class. The court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

'(j) In the conduct of a class action the court may make appropriate orders:

'(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

'(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members or to the Attorney General of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

'(3) imposing conditions on the representative parties or on intervenors;

'(4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

'(5) dealing with similar procedural matters.

'(k) The filing of a suit under this section tolls the statute of limitations for bringing a suit by an individual under Section 16 of this Article. An order of the court denying the

bringing of a suit as a class action does not affect the ability of an individual to bring the same or a similar suit under Section 16 of this Article.

'Sec. 19. Preliminary Notice. (a) At least 30 days prior to the commencement of a class action suit for damages under Section 17 of this Article, the prospective plaintiff must notify the intended defendant of his complaint and make demand that the defendant provide relief to the prospective plaintiff and others similarly situated. A copy of the notice must also be sent to the Commissioner of Insurance.

'(b) The notice must be in writing and sent by certified or registered mail, return receipt requested, to the place where the transaction occurred, the intended defendant's principal place of business in this state, or if neither will effect notice, to the office of the Secretary of State of Texas.

'(c) An action for injunctive relief under Section 17 of this Article may be commenced without compliance with Subsection (a) of this section. Not less than 30 days after the commencement of an action for injunctive relief, and after compliance with the provisions of Subsection (a) of this section, the plaintiff may amend his complaint without leave of court to include a request for damages.

'(d) No damages may be awarded to a class under Section 17 of this Article if within 30 days of receipt of the notice the intended defendant furnished the plaintiff, by certified or registered mail, return receipt requested, a written offer of settlement. The offer of settlement must include a statement that:

'(1) all others similarly situated have been adequately identified or a reasonable effort to identify such others has been made, and a description of the class so identified and the method employed to identify them;

'(2) all persons so identified have been notified that upon request the intended defendant will provide relief to them and all others similarly situated, and a complete explanation of the relief being afforded and a copy of the notice or communication which the intended defendant is providing to the members of the class;

'(3) the remedy requested by the plaintiff has been, or within a stated reasonable period of time, will be given; and

'(4) the practice complained of has ceased.

'(e) Attempts to comply with the provisions of this section by a person receiving a demand shall be an offer to compromise and shall be inadmissible as evidence. Attempts to comply with a demand shall not be considered an admission of engaging in an unlawful act or practice. Evidence of compliance or attempts to comply with the provisions of this section may be introduced by a defendant for the purpose of establishing good faith or to show compliance with the provisions of this section.

'Sec. 20. Damages: Defense. No award of damages may be given in any class action filed under Section 17 of this Article if the defendant:

'(1) proves that the action complained of resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any error; and

'(2) made restitution of any consideration received from any member of the class.

'Sec. 21. Venue. Any action brought under this Article shall be commenced in a district court of Travis County, Texas, if the State Board of Insurance is a party thereto.

'Sec. 22. Voluntary Compliance. (a) In the administration of this Article the Board may accept assurance of voluntary compliance with respect to any act or practice which violates

this Article or regulations issued under this Article or any act declared to be unlawful in Section 17.46 of the Business and Commerce Code from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with the Board.

'(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this Article or regulations issued under this Article, or Section 17.46, Business and Commerce Code, restore to any person in interest any money which may have been acquired by means of acts or practices which violate this Article or regulations issued under this Article, or Section 17.46, Business and Commerce Code.

'(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this Article or regulations issued under this Article or Section 17.46, Business and Commerce Code. However, unless an assurance has been rescinded by agreement, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this Article or regulations issued under this Article or Section 17.46, Business and Commerce Code.

'(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurance of voluntary compliance shall in no way affect individual rights of action under this Article, except that the right of individuals with regard to money received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance. ✓

" Sec. 23. These civil penalties, premium refunds, judgments, compensatory judgments, individual recoveries, orders, class action awards, costs, damages, or attorneys' fees which are

assessed or awarded as provided in this Article shall be paid only from the capital or surplus funds of the offending insurance company, and no such payments shall take precedence over, be in priority to, or in any manner be applicable to the provisions of Article 21.28-B, Insurance Code, known as the Loss Claimants Priorities Act, Article 21.28-C, Insurance Code, known as the Property and Casualty Insurance Guaranty Act, Article 21.28-E, Insurance Code, known as the Life, Health and Accident Guaranty Act, any other similar insurance guaranty act hereafter enacted by the Texas Legislature, or Article 21.39-A, Insurance Code, known as the Asset Protection Act, and such special statutes and the priorities or funds created thereby shall be exempt from the provisions of this Article. ⑥

"Sec. 24. No remedy or civil penalty shall lie or exist by reason of any act or omission occurring prior to the effective date of this Act. ⑥"

Sec. 3. Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-10.01, et seq., Vernon's Texas Civil Statutes), is repealed.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted. ⑥

By: Parker of Jefferson, Temple, et al

H.B. No. 417

A BILL TO BE ENTITLED

AN ACT

relating to the definition and regulation of unlawful trade, acts and practices, the protection of Texas consumers, and providing for consumer remedies; amending Chapter 17, Business & Commerce Code, as amended, by adding Subchapter E; amending Sections 7 and 13, Article 21.21, Insurance Code, as amended, and adding new Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24; repealing Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Articles 5059-10.01 et seq., Vernon's Texas Civil Statutes); and declaring an emergency. _____

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: _____

Section 1. Chapter 17, Business & Commerce Code, as amended, is amended by adding Subchapter E to read as follows: _____

"SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND
CONSUMER REMEDIES

"Sec. 17.41. SHORT TITLE. This subchapter may be cited as the Deceptive Trade Practices-Consumer Remedies Act. _____

"Sec. 17.42. WAIVER; PUBLIC POLICY. Any waiver by a consumer of the provision of this subchapter is contrary to public policy and is unenforceable and void. _____

"Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law. The provisions of this subchapter do not in any way preclude other political subdivisions of this _____

1 state from dealing with deceptive trade practices.

2 "Sec. 17.44. CONSTRUCTION AND APPLICATION. This subchapter
3 shall be liberally construed and applied to promote its underlying
4 purposes, which are to protect consumers against false, misleading,
5 and deceptive business practices, unconscionable actions, and
6 breaches of warranty, and to provide efficient and economical
7 procedures to secure such protection.

8 "Sec. 17.45. DEFINITIONS. As used in this subchapter:

9 "(1) 'Goods' means tangible chattels bought for use
10 primarily for personal, family, or household purposes, including
11 certificates or coupons exchangeable for such goods, and including
12 goods which, at the time of the sale or subsequently, are to be
13 affixed to real property as to become a part of the real property
14 whether or not severable.

15 "(2) 'Services' means work, labor, and services for
16 other than commercial or business use, including services furnished
17 in connection with the sale or repair of goods.

18 "(3) 'Person' means an individual, partnership,
19 corporation, association, or other group, however organized.

20 "(4) 'Consumer' means an individual who seeks or
21 acquires by purchase or lease, any goods or services for personal,
22 family, or household purposes.

23 "(5) 'Merchant' means a party to a consumer
24 transaction other than a consumer.

25 "(6) 'Trade' and 'commerce' mean the advertising,
26 offering for sale, sale, lease, or distribution of any good or

1 service, of any property, tangible or intangible, real, personal,
2 or mixed, and any other article, commodity, or thing of value,
3 wherever situated, and shall include any trade or commerce directly
4 or indirectly affecting the people of this state. _____

5 "(7) 'Documentary material' includes the original
6 or a copy of any book, record, report, memorandum, paper,
7 communication, tabulation, map, chart, photograph, mechanical
8 transcription, or other tangible document or recording, wherever
9 situated. _____

10 "(8) 'Consumer protection division' means the
11 antitrust and consumer protection division of the attorney
12 general's office. _____

13 "(9) 'Knowingly' means actual awareness of the falsity
14 or deception, but actual awareness may be inferred where objective
15 manifestations indicate that a person acted with actual awareness. _____

16 "Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a)
17 False, misleading, or deceptive acts or practices in the conduct
18 of any trade or commerce are hereby declared unlawful. _____

19 "(b) The term 'false, misleading, or deceptive acts or
20 practices' includes, but is not limited to, the following acts: _____

21 "(1) passing off goods or services as those of
22 another; _____

23 "(2) causing confusion or misunderstanding as to the
24 source, sponsorship, approval, or certification of goods or
25 services; _____

26 "(3) causing confusion or misunderstanding as to _____

1 affiliations, connection, or association with, or certification
2 by, another; _____

3 "(4) using deceptive representations or designations
4 of geographic origin in connection with goods or services; _____

5 "(5) representing that goods or services have
6 sponsorship, approval, characteristics, ingredients, uses,
7 benefits, or quantities which they do not have or that a person
8 has a sponsorship, approval, status, affiliation, or connection
9 which he does not; _____

10 "(6) representing that goods are original or new if
11 they are deteriorated, reconditioned, reclaimed, used, or
12 secondhand; _____

13 "(7) representing that goods or services are of a
14 particular standard, quality, or grade, or that goods are of a
15 particular style or model, if they are of another; _____

16 "(8) disparaging the goods, services, or business
17 of another by false or misleading representation of facts; _____

18 "(9) advertising goods or services with intent not
19 to sell them as advertised; _____

20 "(10) advertising goods or services with intent not
21 to supply a reasonable expectable public demand, unless the
22 advertisements disclosed a limitation of quantity; _____

23 "(11) making false or misleading statements of fact
24 concerning the reasons for, existence of, or amount of price
25 reductions; _____

26 "(12) representing that an agreement confers or _____

1 involves rights, remedies, or obligations which it does not have
2 or involve, or which are prohibited by law; _____

3 "(13) knowingly making false or misleading statements
4 of fact concerning the need for parts, replacement, or repair
5 service; _____

6 "(14) misrepresenting the authority of a salesman,
7 representative or agent to negotiate the final terms of a consumer
8 transaction; _____

9 "(15) basing a charge for the repair of any item in
10 whole or in part on a guaranty or warranty instead of on the value
11 of the actual repairs made or work to be performed on the item
12 without stating separately the charges for the work and the charge
13 for the warranty or guaranty, if any; _____

14 "(16) disconnecting, turning back, or resetting the
15 odometer of any motor vehicle so as to reduce the number of miles
16 indicated on the odometer gauge; _____

17 "(17) advertising of any sale by fraudulently
18 representing that a person is going out of business; _____

19 "(18) using or employing a chain referral sales plan
20 in connection with the sale or offer to sell of goods, merchandise,
21 or anything of value, which uses the sales technique, plan,
22 arrangement, or agreement in which the buyer or prospective buyer
23 is offered the opportunity to purchase merchandise or goods and
24 in connection with the purchase receives the seller's promise or
25 representation that the buyer shall have the right to receive
26 compensation or consideration in any form for furnishing to the _____

1 seller the names of other prospective buyers if receipt of the
2 compensation or consideration is contingent upon the occurrence
3 of an event subsequent to the time the buyer purchases the
4 merchandise or goods; _____

5 "(19) representing that a guaranty or warranty confers
6 or involves rights or remedies which it does not have or involve,
7 provided, however, that nothing in this subchapter shall be
8 construed to expand the implied warranty of merchantability as
9 defined in Section 2.314 through 2.318 of the Business & Commerce
10 Code to involve obligations in excess of those which are
11 appropriate to the goods; or _____

12 "(20) Selling or offering to sell either directly
13 or associated with the sale of goods or services, a right of
14 participation in a multi-level distributorship. As used herein,
15 'multi-level distributorship' means a sales plan for the
16 distribution of goods or services in which promises of rebate or
17 payment are made to individuals, conditioned upon those individuals
18 recommending or securing additional individuals to assume positions
19 in the sales operation, and where the rebate or payment is not
20 exclusively conditioned on or in relation to proceeds from the
21 retail sales of goods. _____

22 "(c) It is the intent of the legislature that in construing
23 Subsection (a) of this section the courts to the extent possible
24 will be guided by Subsection (b) of this section and the
25 interpretations given by the Federal Trade Commission and federal
26 courts to Section 5(a)(1) of the Federal Trade Commission Act 15 _____

1 U.S.C.A. 45(a)(1).

2 "(d) The omission of a given act or practice from Subsection
3 (b) of this section shall not limit the courts from determining
4 that the act or practice is unlawful under this subchapter.

5 "Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer
6 protection division has reason to believe that any person is
7 engaging in, has engaged in, or is about to engage in any act or
8 practice declared to be unlawful by this subchapter, and that
9 proceedings would be in the public interest, the division may
10 bring an action in the name of the state against the person to
11 restrain by temporary or permanent injunction the use of such
12 method, act or practice. Nothing herein shall require the consumer
13 protection division to notify such person that court action is
14 or may be under consideration. Provided, however, the consumer
15 protection division shall, at least seven days prior to instituting
16 such court action, contact such person to inform him in general
17 of the alleged unlawful conduct. Cessation of unlawful conduct
18 after such prior contact shall not render such court action moot
19 under any circumstances; and such injunctive relief shall lie
20 even if such person has ceased such unlawful conduct after such
21 prior contact. Such prior contact shall not be required if, in
22 the opinion of the consumer protection division, there is good
23 cause to believe that such person would evade service of process
24 if prior contact were made or that such person would destroy
25 relevant records if prior contact were made. The consumer
26 protection division may bring any action under this section against

1 a licensed insurer or insurance agent for a violation of this
2 subchapter, Article 21.21, Texas Insurance Code, or the rules and
3 regulations of the State Board of Insurance issued under Article
4 21.21, Texas Insurance Code, only on the written request of the
5 State Board of Insurance or the Commissioner of Insurance.

6 "(b) An action brought under Subsection (a) of this section
7 may be commenced in the district court of the county in which the
8 person against whom it is brought resides, has his principal place
9 of business, is doing business, or in the district court of the
10 county where the transaction occurred or any substantial portion
11 of the transaction occurred, or, on the consent of the parties,
12 in a district court of Travis County. The court may issue
13 temporary or permanent injunctions to restrain and prevent
14 violations of this subchapter and the injunctions shall be issued
15 without bond.

16 "(c) In addition to the request for a temporary or permanent
17 injunction in a proceeding brought under Subsection (a) of this
18 section, the consumer protection division, on a finding by the
19 court that the defendant has engaged or is engaging in a practice
20 declared to be unlawful by this subchapter, may request a civil
21 penalty of not more than \$2,000 per violation not to exceed a
22 total of \$10,000 to be paid to the state.

23 "(d) The court may make such additional order or judgments
24 as are necessary to compensate identifiable persons for actual
25 damages or restoration of money or property, real or personal,
26 which may have been acquired by means of any act or practice

1 restrained. Damages may not include any damages incurred beyond
2 a point two years prior to the institution of the action by the
3 consumer protection division. Orders of the court may also include
4 the appointment of a receiver or a sequestration of assets if a
5 person who has been ordered by a court to make restitution under
6 this section has failed to do so within three months after the
7 order to make restitution has become final and nonappealable.

8 "(e) Any person who violates the terms of an injunction
9 under this section shall forfeit and pay to the state a civil
10 penalty of not more than \$10,000 per violation not to exceed
11 \$50,000. In determining whether or not an injunction has been
12 violated the court shall take into consideration the maintenance
13 of procedures reasonably adapted to insure compliance with the
14 injunction. For the purposes of this section, the district court
15 issuing the injunction shall retain jurisdiction, and the cause
16 shall be continued, and in these cases, the consumer protection
17 division, or the district or county attorney with prior notice
18 to the consumer protection division, acting in the name of the
19 state, may petition for recovery of civil penalties under this
20 section.

21 "(f) An order of the court awarding civil penalties under
22 Subsection (e) of this section applies only to violations of the
23 injunction incurred prior to the awarding of the penalty order.
24 Second or subsequent violations of an injunction issued under
25 this section are subject to the same penalties set out in
26 Subsection (e) of this section.

1 "Sec. 17.48. DUTY OF DISTRICT AND COUNTY ATTORNEY. (a)

2 It is the duty of the district and county attorneys to lend to
3 the consumer protection division any assistance requested in the
4 commencement and prosecutions of action under this subchapter. _____

5 "(b) A district or county attorney, with prior written
6 notice to the consumer protection division, may institute and
7 prosecute actions seeking injunctive relief under this subchapter,
8 after complying with the prior contact provisions of Subsection
9 (a) of Section 17.47 of this subchapter. On request, the consumer
10 protection division shall assist the district or county attorney
11 in any action taken under this subchapter. If an action is
12 prosecuted by a district or county attorney alone, he shall make
13 a full report to the consumer protection division including a
14 final disposition of the matter. No district or county attorney
15 may bring an action under this section against any licensed insurer
16 or licensed insurance agent transacting business under the
17 authority and jurisdiction of the State Board of Insurance unless
18 first requested in writing to do so by the State Board of
19 Insurance, the Commissioner of Insurance, or the consumer
20 protection division pursuant to a request by the State Board of
21 Insurance or Commissioner of Insurance. _____

22 "Sec. 17.49. EXEMPTIONS. (a) Nothing in this subchapter
23 shall apply to the owner or employees of a regularly published
24 newspaper, magazine, or telephone directory, or broadcast station
25 or billboard, wherein any advertisement in violation of this
26 subchapter is published or disseminated, unless it is established _____

1 that the owner or employees of the advertising medium have
2 knowledge of the false, deceptive, or misleading acts or practices
3 declared to be unlawful by this subchapter or had a direct or
4 substantial financial interest in the sale or distribution of the
5 unlawfully advertised good or service. Financial interest as
6 used in this section relates to an expectation which would be the
7 direct result of such advertisement.

8 "(b) Nothing in this subchapter shall apply to acts or
9 practices authorized under specific rules or regulations
10 promulgated by the Federal Trade Commission under Section 5(a)(1)
11 of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The
12 provisions of this subchapter do apply to any act or practice
13 prohibited or not specifically authorized by a rule or regulation
14 of the Federal Trade Commission. An act or practice is not
15 specifically authorized if no rule or regulation has been issued
16 on the act or practice.

17 "Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may
18 maintain an action if he has been adversely affected by any of
19 the following:

20 "(1) the use or employment by any person of an act
21 or practice declared to be unlawful by Section 17.46 of this
22 subchapter;

23 "(2) a failure by any person to comply with an express
24 or implied warranty;

25 "(3) any unconscionable action or course of action
26 by any person; or

1 "(4) the use or employment by any person of an act
2 or practice in violation of Article 21.21, Texas Insurance Code,
3 or rules or regulations issued by the State Board of Insurance
4 under Article 21.21, Texas Insurance Code. _____

5 "(b) In a suit filed under this section, each consumer who
6 prevails may obtain: _____

7 "(1) three times the amount of actual damages plus
8 court costs and attorneys' fees reasonable in relation to the
9 amount of work expended; _____

10 "(2) an order enjoining such acts or failure to act; _____

11 "(3) punitive damages; _____

12 "(4) orders necessary to restore to any party to the
13 suit any money or property, real or personal, which may have been
14 acquired in violation of this subchapter; and _____

15 "(5) any other relief which the court deems proper,
16 including the appointment of a receiver or the revocation of a
17 license or certificate authorizing a person to engage in business
18 in this state if the judgment has not been satisfied within three
19 months of the date of the final judgment. The court may not
20 revoke or suspend a license to do business in this state or appoint
21 a receiver to take over the affairs of a person who has failed
22 to satisfy a judgment if the person is a licensee of or regulated
23 by a state agency which has statutory authority to revoke or
24 suspend a license or to appoint a receiver or trustee. _____

25 "(c) On a finding by the court that an action under this
26 section was groundless and brought in bad faith or for the purpose

1 of harassment, the court may award to the defendant reasonable
2 attorneys' fees in relation to the amount of work expended, court
3 costs, and punitive damages. _____

4 "Sec. 17.51. CLASS ACTIONS. (a) If a consumer has been
5 damaged by an unlawful method, act, or practice contained in
6 Subsection (b), Section 17.46 of this subchapter, an act or
7 practice in violation of Article 21.21, Texas Insurance Code, or
8 rules or regulations issued by the State Board of Insurance under
9 Article 21.21, Texas Insurance Code, or by an act or practice or
10 type of act or practice previously declared unlawful, deceptive,
11 or unconscionable to the consumer by a final judgment of an
12 appellate court of proper jurisdiction and venue in this state
13 that was reported officially, a consumer may bring an action on
14 behalf of himself and other consumers if the unlawful act or
15 practice has caused damage to the other consumers who are similarly
16 situated, to recover damages and relief as provided in this
17 subchapter. _____

18 "(b) A plaintiff who prevails on a class action under this
19 subchapter may recover: _____

20 "(1) court costs and attorneys' fees reasonable in
21 relation to the amount of work expended in addition to actual
22 damages; _____

23 "(2) an order enjoining the act or failure to act; _____

24 "(3) punitive damages; _____

25 "(4) any orders which may be necessary to restore
26 to any party to the suit any money or property, real or personal, _____

1 which may have been acquired in violation of this subchapter; and —

2 "(5) any other relief which the court deems proper
3 including the appointment of a receiver or revocation of a license
4 or certificate to engage in business in this state if the judgment
5 has not been satisfied within six months of the date of issuance
6 of the final judgment. The court may not revoke or suspend a
7 license to do business in this state or appoint a receiver to
8 take over the affairs of a person who has failed to satisfy a
9 judgment if the person is a licensee of or regulated by a state
10 agency which has statutory authority to revoke or suspend a license
11 or to appoint a receiver or trustee. _____

12 "(c) On a finding by the court that an action under this
13 section was brought in bad faith or for purposes of harassment,
14 the court may award to the defendant reasonable attorneys' fees
15 in relation to the work expended, court costs, and punitive
16 damages. _____

17 "(d) An action under this section may not be maintained
18 or shall be stayed if proceedings regarding an administrative
19 class action under Section 14 of Article 21.21, Insurance Code,
20 have been initiated regarding the same acts or practices and the
21 same defendant in the action under this section. _____

22 "Sec. 17.52. CLASS ACTION: PROCEDURE. (a) The court
23 shall permit one or more members of a class to sue or be sued as
24 representative parties on behalf of the class only if: _____

25 "(1) the class is so numerous that joinder of all
26 members is impracticable; _____

1 "(2) there are questions of law or fact common to
2 the class; _____

3 "(3) the claims or defenses of the representative
4 parties are typical of the claims or defenses of the class; and _____

5 "(4) the representative parties will fairly and
6 adequately protect the interests of the class. _____

7 "(b) An action may be maintained as a class action if the
8 prerequisites of Subsection (a) of this section are satisfied and
9 in addition: _____

10 "(1) the prosecution of separate actions by or against
11 individual members of the class would create a risk of: _____

12 "(A) inconsistent or varying adjudications
13 with respect to individual members of the class which would
14 establish incompatible standards of conduct for the party opposing
15 the class; or _____

16 "(B) adjudications with respect to individual
17 members of the class which would as a practical matter be
18 dispositive of the interests of the other members not parties to
19 the adjudications or substantially impair or impede their ability
20 to protect their interests; or _____

21 "(2) the party opposing the class has acted or refused
22 to act on grounds generally applicable to the class, thereby
23 making appropriate final injunctive relief or corresponding
24 declaratory relief with respect to the class as a whole; or _____

25 "(3) the court finds that the questions of law or
26 fact common to the members of the class predominate over any _____

1 questions affecting only individual members, and that a class
2 action is superior to other available methods for the fair and
3 efficient adjudication of the controversy. The matters pertinent
4 to the findings include: _____

5 "(A) the interest of members of the class in
6 individually controlling the prosecution or defense of separate
7 actions; _____

8 "(B) the extent and nature of any litigation
9 concerning the controversy already commenced by or against members
10 of the class; _____

11 "(C) the desirability or undesirability of
12 controversy concentrating the litigation of the claims in the
13 particular forum; and _____

14 "(D) the difficulties likely to be encountered
15 in the management of a class action. _____

16 "(c) In construing this section, the courts of Texas shall
17 be guided by the decisions of the federal courts interpreting
18 Rule 23, Federal Rules of Civil Procedure. _____

19 "(d) As soon as practicable after the commencement of an
20 action brought as a class action, the court shall determine by
21 order whether it is to be maintained as a class action. An order
22 under this subsection may be altered or amended before a decision
23 on the merits. An order determining that the action may or may
24 not be brought as a class action is an interlocutory order which
25 is appealable and the procedures provided in Rule 385, Texas Rules
26 of Civil Procedure, apply. _____

1 "(e) If the action is permitted as a class action, the
2 court shall direct to the members of the class the best notice
3 practicable under the circumstances, including individual notice
4 to all members who can be identified through reasonable effort. _____

5 "(f) The notice shall contain a statement that: _____

6 "(1) the court will exclude the member notified from
7 the class if he so requests by a specified date; _____

8 "(2) the judgment, whether favorable or not, will
9 include all members who do not request exclusion; and _____

10 "(3) any member who does not request exclusion, if
11 he desires, may enter an appearance through counsel. _____

12 "(g) A class action may not be dismissed, settled, or
13 compromised without the approval of the court, and notice of the
14 proposed dismissal, settlement, or compromise shall be given to
15 all members of the class in such manner as the court directs. _____

16 "(h) When appropriate, an action may be brought or
17 maintained as a class action with respect to particular issues
18 or a class may be divided into subclasses and each subclass treated
19 as a class, and the provisions of this section shall be construed
20 and applied accordingly. _____

21 "(i) The judgment in a class action shall describe those
22 to whom the notice was directed and who have not requested
23 exclusion and those the court finds to be members of the class.
24 The court shall direct to the members of the class the best notice
25 practicable under the circumstances, including individual notice
26 to all members who can be identified through reasonable effort. _____

1 "(j) In the conduct of a class action the court may make
2 appropriate orders: _____

3 "(1) determining the course of proceedings or
4 prescribing measures to prevent undue repetition or complication
5 in the presentation of evidence or argument; _____

6 "(2) requiring, for the protection of the members
7 of the class or otherwise for the fair conduct of the action,
8 that notice be given in such manner as the court may direct to
9 some or all of the members or to the attorney general of any step
10 in the action, or of the proposed extent of the judgment, or of
11 the opportunity of members to signify whether they consider the
12 representation fair and adequate, to intervene and present claims
13 or defenses, or otherwise to come into the action; _____

14 "(3) imposing conditions on the representative parties
15 or on intervenors; _____

16 "(4) requiring that the pleadings be amended to
17 eliminate allegations as to representation of absent persons, and
18 that the action proceed accordingly; or _____

19 "(5) dealing with similar procedural matters. _____

20 "(k) The filing of a suit under this section tolls the
21 statute of limitations for bringing a suit by an individual under
22 Section 17.50 of this subchapter. An order of the court denying
23 the bringing of a suit as a class action does not affect the
24 ability of an individual to bring the same or a similar suit under
25 Section 17.50 of this subchapter. _____

26 "Sec. 17.53. PRELIMINARY NOTICE. (a) At least 30 days _____

1 prior to the commencement of a suit for damages under Section
2 17.51 of this subchapter, the consumer must notify the intended
3 defendant of his complaint and make demand that the defendant
4 provide relief to the consumer and others similarly situated. _____

5 "(b) The notice must be in writing and sent by certified
6 or registered mail, return receipt requested, to the place where
7 the transaction occurred, the intended defendants' principal place
8 of business in this state, or if neither will effect notice, to
9 the office of the Secretary of State of Texas. _____

10 "(c) An action for injunctive relief under Section 17.51
11 of this subchapter may be commenced without compliance with
12 Subsection (a) of this section. Not less than 30 days after the
13 commencement of an action for injunctive relief, and after
14 compliance with the provisions of Subsection (a) of this section,
15 the consumer may amend his complaint without leave of court to
16 include a request for damages. _____

17 "(d) No damages may be awarded to a consumer class under
18 this section if within 30 days of receipt of the notice the
19 intended defendant furnished the consumer, by certified or
20 registered mail, return receipt requested, a written offer of
21 settlement. The offer of settlement must include a statement
22 that: _____

23 "(1) all consumers similarly situated have been
24 adequately identified or a reasonable effort to identify such
25 other consumers has been made, and a description of the class so
26 identified and the method employed to identify them; _____

1 "(2) all consumers so identified have been notified
2 that upon their request the intended defendant will provide relief
3 to the consumer and all others similarly situated, and a complete
4 explanation of the relief being afforded and a copy of the notice
5 or communication which the intended defendant is providing to the
6 members of the class; _____

7 "(3) the remedy requested by the consumer has been,
8 or within a stated reasonable period of time, will be given; and _____

9 "(4) the practice complained of has ceased. _____

10 "(e) Attempts to comply with the provisions of this section
11 by a person receiving a demand shall be an offer to compromise
12 and shall be inadmissible as evidence. Attempts to comply with
13 a demand shall not be considered an admission of engaging in an
14 unlawful act or practice. Evidence of compliance or attempts to
15 comply with the provisions of this section may be introduced by
16 a defendant for the purpose of establishing good faith or to show
17 compliance with the provisions of this section. _____

18 "Sec. 17.54. DAMAGES: DEFENSE. No award of damages may
19 be given in any action filed under Section 17.51 of this subchapter
20 if the defendant: _____

21 "(1) proves that the action complained of resulted
22 from a bona fide error notwithstanding the use of reasonable
23 procedures adopted to avoid any error; and _____

24 "(2) made restitution of any consideration received
25 from any member of the class. _____

26 "Sec. 17.55. PROMOTIONAL MATERIAL. If damages or civil _____

1 penalties are assessed against the seller of goods or services
2 for advertisements or promotional material in a suit filed under
3 Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the
4 seller of the goods or services has a cause of action against a
5 third party for the amount of damages or civil penalties assessed
6 against the seller plus attorneys' fees on a showing that: _____

7 "(1) the seller received the advertisements or
8 promotional material from the third party; _____

9 "(2) the seller's only action with regard to the
10 advertisements or promotional material was to disseminate the
11 material; and _____

12 "(3) the seller has ceased disseminating the material. _____

13 "Sec. 17.56. VENUE. An action brought under Section 17.50
14 or 17.51 of this subchapter may be commenced in the county in
15 which the person against whom the suit is brought resides, has
16 his principal place of business, or is doing business. _____

17 "Sec. 17.57. SUBPOENAS. The clerk of a district court at
18 the request of any party to a suit pending in his court which is
19 brought under this subchapter shall issue a subpoena for any
20 witness or witnesses who may be represented to reside within 100
21 miles of the courthouse of the county in which the suit is pending
22 or who may be found within such distance at the time of trial.
23 The clerk shall issue a separate subpoena and a copy thereof for
24 each witness subpoenaed. When an action is pending in Travis
25 County on the consent of the parties a subpoena may be issued for
26 any witness or witnesses who may be represented to reside within _____

1 100 miles of the courthouse of a county in which the suit could
2 otherwise have been brought or who may be found within such
3 distance at the time of the trial. _____

4 "Sec. 17.58. VOLUNTARY COMPLIANCE. (a) In the
5 administration of this subchapter the consumer protection division
6 may accept assurance of voluntary compliance with respect to any
7 act or practice which violates this subchapter from any person
8 who is engaging in, has engaged in, or is about to engage in the
9 act or practice. The assurance shall be in writing and shall be
10 filed with and subject to the approval of the district court in
11 the county in which the alleged violator resides or does business,
12 or in the district court of Travis County. _____

13 "(b) The acceptance of an assurance of voluntary compliance
14 may be conditioned on the stipulation that the person in violation
15 of this subchapter restore to any person in interest any money
16 or property, real or personal, which may have been acquired by
17 means of acts or practices which violate this subchapter. _____

18 "(c) An assurance of voluntary compliance shall not be
19 considered an admission of prior violation of this subchapter.
20 However, unless an assurance has been rescinded by agreement of
21 the parties or voided by a court for good cause, subsequent failure
22 to comply with the terms of an assurance is prima facie evidence
23 of a violation of this subchapter. _____

24 "(d) Matters closed by the filing of an assurance of
25 voluntary compliance may be reopened at any time. Assurances of
26 voluntary compliance shall in no way affect individual rights of. _____

1 action under this subchapter, except that the rights of individuals
2 with regard to money or property received pursuant to a stipulation
3 in the voluntary compliance under Subsection (b) of this section
4 are governed by the terms of the voluntary compliance. _____

5 "Sec. 17.59. POWERS OF RECEIVER. (a) When a receiver is
6 appointed by the court under this subchapter, he shall have the
7 power to sue for, collect, receive, and take into his possession
8 all the goods and chattels, rights and credits, money and effects,
9 lands, tenements, books, records, documents, papers, choses in
10 action, bills, notes, and property of every description, derived
11 by means of any practice declared to be illegal and prohibited
12 by this subchapter, including property with which such property
13 has been mingled if it cannot be identified in kind because of
14 the commingling, and to sell, convey, and assign the property and
15 hold and dispose of the proceeds under the direction of the court.
16 Any person who has suffered damages as a result of use or
17 employment of any unlawful practices and submits proof to the
18 satisfaction of the court that he has in fact been damaged, may
19 participate with general creditors in the distribution of the
20 assets to the extent he has sustained out-of-pocket losses. In
21 the case of a partnership or business entity, the receiver shall
22 settle the estate and distribute the assets under the direction
23 of the court. The court shall have jurisdiction of all questions
24 arising in the proceedings and may make any orders or judgments
25 required. _____

26 "(b) If the claims of consumers remain unsatisfied after _____

1 distribution of the assets, the court may order that all persons
2 who knowingly participated in the unlawful enterprise be held
3 jointly and severally liable to the extent of the unsatisfied
4 consumer claims if such person: _____

5 "(1) contributed substantial personal services,
6 money, credit, real, personal, or mixed property, or any other
7 thing of substantial value with the expectation of sharing in the
8 profits of the enterprise; and _____

9 "(2) had knowledge or should have had knowledge of
10 the unlawful purpose of the enterprise at the time such things
11 of value were contributed, or freely continued in the association
12 or other relationship after gaining knowledge of the unlawful
13 purpose of the enterprise. _____

14 "Sec. 17.60. REPORTS AND EXAMINATIONS. Whenever the
15 consumer protection division has reason to believe that a person
16 is engaging in, has engaged in, or is about to engage in any act
17 or practice declared to be unlawful by this subchapter, or when
18 it reasonably believes it to be in the public interest to conduct
19 an investigation to ascertain whether any person is engaging in,
20 has engaged in, or is about to engage in any such act or practice,
21 an authorized member of the division may: _____

22 "(1) require the person to file on the prescribed
23 forms a statement or report in writing, under oath or otherwise,
24 as to all the facts and circumstances concerning the alleged
25 violation and such other data and information as the consumer
26 protection division deems necessary; _____

1 "(2) examine under oath any person in connection
2 with this alleged violation; _____

3 "(3) examine any merchandise or sample of merchandise
4 deemed necessary and proper; and _____

5 "(4) pursuant to an order of the appropriate court,
6 impound any sample of merchandise that is produced in accordance
7 with this subchapter and retain it in the possession of the
8 division until the completion of all proceedings in connection
9 with which the merchandise is produced. _____

10 "This section shall not apply to licensed insurers or
11 licensed insurance agents transacting an insurance business in
12 this state under the authority and jurisdiction of the State Board
13 of Insurance unless the State Board of Insurance or the Insurance
14 Commissioner has requested in writing that the consumer protection
15 division file an action under Section 17.47 of this subchapter. _____

16 "Sec. 17.61. CIVIL INVESTIGATIVE DEMAND. (a) Whenever
17 the consumer protection division believes that any person may be
18 in possession, custody, or control of the original copy of any
19 documentary material relevant to the subject matter of an
20 investigation of a possible violation of this subchapter, an
21 authorized agent of the division may execute in writing and serve
22 on the person a civil investigative demand requiring the person
23 to produce the documentary material and permit inspection and
24 copying. This section shall not apply to licensed insurers or
25 licensed insurance agents transacting an insurance business in
26 this state under the authority and jurisdiction of the State Board. _____

1 of Insurance unless the State Board of Insurance or the Insurance
2 Commissioner has requested in writing that the consumer protection
3 division file an action under Section 17.47 of this subchapter. _____

4 "(b) Each demand shall: _____

5 "(1) state the statute and section under which the
6 alleged violation is being investigated, and the general subject
7 matter of the investigation; _____

8 "(2) describe the class or classes of documentary
9 material to be produced with reasonable specificity so as to
10 fairly indicate the material demanded; _____

11 "(3) prescribe a return date within which the
12 documentary material is to be produced; and _____

13 "(4) identify the members of the consumer protection
14 division to whom the documentary material is to be made available
15 for inspection and copying. _____

16 "(c) A civil investigative demand may contain a requirement
17 or disclosure of documentary material which would be discoverable
18 under the Texas Rules of Civil Procedure. _____

19 "(d) Service of any demand may be made by: _____

20 "(1) delivering a duly executed copy of the demand
21 to the person to be served or to a partner or to any officer or
22 agent authorized by appointment or by law to receive service of
23 process on behalf of that person; _____

24 "(2) delivering a duly executed copy of the demand
25 to the principal place of business in the state of the person to
26 be served; _____

1 "(3) mailing by registered mail or certified mail
2 a duly executed copy of the demand addressed to the person to be
3 served at the principal place of business in this state, or if
4 the person has no place of business in this state, to his principal
5 office or place of business. _____

6 "(e) Documentary material demanded pursuant to this section
7 shall be produced for inspection and copying during normal business
8 hours at the principal office or place of business of the person
9 served, or at other times and place as may be agreed on by the
10 person served and the consumer protection division. _____

11 "(f) No documentary material produced pursuant to a demand
12 under this section, unless otherwise ordered by a court for good
13 cause shown, shall be produced for inspection or copying by, nor
14 shall its contents be disclosed to any person other than the
15 authorized employee of the consumer protection division without
16 the consent of the person who produced the material. The consumer
17 protection division shall prescribe reasonable terms and conditions
18 allowing the documentary material to be available for inspection
19 and copying by the person who produced the material or any duly
20 authorized representative of that person. The consumer protection
21 division may use the documentary material or copies of it as it
22 determines necessary in the enforcement of this subchapter,
23 including presentation before any court. Any material which
24 contains trade secrets shall not be presented except with the
25 approval of the court in which the action is pending after adequate
26 notice to the person furnishing the material. _____

1 "(g) At any time before the return date specified in the
2 demand, or within 20 days after the demand has been served,
3 whichever period is shorter, a petition to extend the return date
4 for, or to codify or set aside the demand, stating good cause,
5 may be filed in the district court in the county where the parties
6 reside, or a district court of Travis County. _____

7 "(h) A person on whom a demand is served under this section
8 shall comply with the terms of the demand unless otherwise provided
9 by a court order. _____

10 "(i) Personal service of a similar investigative demand
11 under this section may be made on any person outside of this state
12 if the person has engaged in conduct in violation of this
13 subchapter. Such persons shall be deemed to have submitted
14 themselves to the jurisdiction of this state within the meaning
15 of this section. _____

16 "Sec. 17.62. PENALTIES. (a) Any person who, with intent
17 to avoid, evade, or prevent compliance, in whole or in part, with
18 Section 17.60 or 17.61 of this subchapter, removes from any place,
19 conceals, withholds, or destroys, mutilates, alters, or by any
20 other means falsifies any documentary material or merchandise or
21 sample of merchandise is guilty of a misdemeanor and on conviction
22 is punishable by a fine of not more than \$5,000 or by confinement
23 in the county jail for not more than one year, or both. _____

24 "(b) If a person fails to comply with a directive of the
25 consumer protection division under Section 17.60 of this subchapter
26 or with a civil investigative demand for documentary material _____

1 served on him under Section 17.61 of this subchapter, or if
2 satisfactory copying or reproduction of the material cannot be
3 done and the person refuses to surrender the material, the consumer
4 protection division may file in the district court in the county
5 in which the person resides, is found, or transacts business, and
6 serve on the person, a petition for an order of the court for
7 enforcement of Sections 17.60 and 17.61 of this subchapter. If
8 the person transacts business in more than one county, the petition
9 shall be filed in the county in which the person maintains his
10 principal place of business, or in another county agreed on by
11 the parties to the petition.

12 "(c) When a petition is filed in the district court in any
13 county under this section, the court shall have jurisdiction to
14 hear and determine the matter presented and to enter any order
15 required to carry into effect the provisions of Sections 17.60
16 and 17.61 of this subchapter. Any final order entered is subject
17 to appeal to the Texas Supreme Court. Failure to comply with any
18 final order entered under this section is punishable by contempt.

19 "Sec. 17.63. APPLICATION. The provisions of this subchapter
20 apply only to acts or practices occurring after the effective
21 date of this subchapter, except a right of action or power granted
22 to the attorney general under Chapter 10, Title 79, Revised Civil
23 Statutes of Texas, 1925, as amended, prior to the effective date
24 of this subchapter."

25 Sec. 2. (a) Amend Section 13, Article 21.21, Texas
26 Insurance Code, to read as follows:

1 "Sec. 13. Rules and Regulations. (a) The State Board of
2 Insurance is authorized to promulgate and may promulgate and
3 enforce reasonable rules and regulations and may order such
4 provision as is necessary in the accomplishment of the purposes
5 of this Article and Article 21.20, including, but not limited to,
6 such express provision within the purposes of these Articles as
7 it deems necessary or as is required to effect necessary uniformity
8 with the laws of other states or the United States or in conformity
9 with the adopted procedures of the National Association of
10 Insurance Commissioners notwithstanding any previous definition
11 or interpretation of terms used in these Articles had in or derived
12 from the common law or other statutory law of this state. _____

13 "(b) A petition may be submitted to the Board to adopt,
14 amend, or repeal a regulation. The petition must be signed by
15 100 interested persons and supported by evidence that a particular
16 act or practice has been or could be false, misleading or deceptive
17 to the insurance buying public, or that an act or practice declared
18 to be false, misleading, or deceptive by a regulation of the Board
19 is not in fact false, misleading, or deceptive. Within 30 days
20 after receipt of the petition the Board must either deny the
21 petition or initiate hearing proceedings under this section. _____

22 "(c) On denial of the petition the Board must state the
23 reason or reasons for denial in writing. Denial is expressly
24 authorized if the action sought by the petition would destroy
25 uniformity with the laws of other states or of the United States
26 or would not be in conformity with the adopted procedures of the _____

National Association of Insurance Commissioners.

"(d) If in response to the petition the Board determines to hold a hearing, such hearing shall be open to the public and any person may present testimony, data, or other information in writing or orally to the Board regarding the acts or practices under consideration.

"(e) A person aggrieved by the denial of the hearing under Subsection (b) of this section or by the adoption, amendment, or repeal of a regulation or failure to issue a regulation under this section, may file a petition in a district court of Travis County for a declaratory judgment on the validity or applicability of a regulation adopted, amended, or repealed under this section or on the denial of a hearing under Subsection (b) of this section. The Board shall be made a party to the action. In a suit under this subsection the district court may issue injunctions.

"(f) The action of the Board in adopting, amending, repealing, or failing to adopt a regulation or denying a hearing may be invalidated only if it is found that it:

"(1) violates a constitutional or state statutory provision;

"(2) exceeds the statutory authority of the Board;

"(3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;

"(4) is so vague that it does not establish sufficiently definite standards with which conduct can be conformed;

1 "(5) is made on unlawful procedure; or

2 "(6) is clearly erroneous in view of the reliable,
3 probative, and substantial evidence in the whole record as
4 submitted."

5 (b) Amend Section 7, Article 21.21, Insurance Code, to
6 read as follows:

7 "Sec. 7. Cease and Desist Orders. (a) If, after [such]
8 hearing under the terms of Section 6 of the Act, the Board shall
9 determine that the method of competition or the act or practice
10 in question is defined in Section 4 of this Article, or rules or
11 regulations issued under this Article, or in Section 17.46 of the
12 Business and Commerce Code and that the person complained of has
13 engaged in such method of competition, act or practice in violation
14 of this Article or rules and regulations issued under this Article
15 or of the Deceptive Trade Practices--Consumer Remedies Act as
16 specified in Section 17.46 of the Business and Commerce Code
17 [Act], it shall reduce its findings to writing and shall issue
18 and cause to be served upon the person charged with the violation
19 an order requiring such person to cease and desist from engaging
20 in such method of competition, and/or practice.

21 "(b) Until a petition appealing from such order shall have
22 been filed in a district court of Travis County, Texas, in
23 accordance with Subchapter F of Chapter 21 of the Insurance Code
24 of this state, or any amendment thereof, the Board may at any
25 time, upon such notice and in such manner as it shall deem proper,
26 modify or set aside in whole or in part any order issued under

1 this section.

2 "(c) Any person who violates the terms of a cease and
 3 desist order under this section shall be given notice to appear
 4 and show cause, at a hearing to be held in conformity with Section
 5 6 of this Article, why he should not forfeit and pay to the state
 6 a civil penalty of not more than \$1,000 per violation and not to
 7 exceed a total of \$5,000. In determining whether or not a cease
 8 and desist order has been violated, the Board shall take into
 9 consideration the maintenance of procedures reasonably adapted
 10 to insure compliance with the order.

11 "(d) An order of the Board awarding civil penalties under
 12 Subsection (c) of this section applies only to violations of this
 13 order incurred prior to the awarding of the penalty order."

14 (c) Amend Article 21.21, Insurance Code by adding Sections
 15 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 to read as follows:

16 "Sec. 14. Administrative Class Action. (a) In connection
 17 with the issuance of a cease and desist order as provided in
 18 Section 7 of this Article or upon application of any aggrieved
 19 person, the Board may, after notice and hearing as provided in
 20 Section 6 of this Article, in connection with the issuance of a
 21 cease and desist order resulting from a finding that an insurer
 22 has engaged in a method of competition, act or practice in
 23 violation of this Article, rules or regulations issued under this
 24 Article or Section 17.46, Business and Commerce Code, or upon
 25 finding by the Board that the aggrieved person and persons
 26 similarly situated were induced to purchase a policy of insurance

as a result of the insurer engaging in a method of competition, act or practice in violation of this Article, rules or regulations issued under this Article or Section 17.46, Business and Commerce Code, the Board may require the insurer to account for all premiums collected for policies issued during the immediately preceding two years in connection with such acts in violation of this Article and require: (i) such insurer to give notice to all persons from whom such premiums were collected, and (ii) to refund the total of all premiums collected from each such person, electing to accept a premium refund in exchange for cancellation of the policy of insurance issued. Premiums so refunded shall be net of policy benefits actually paid by such insurer while the policy of insurance was in force. The Board shall specify a reasonable time within which the insurer shall be required to make such premium refunds.

"(b) If an insurer fails to comply with the Board's requirement to refund such premiums within the time specified, the Board may, in addition to any other sanctions provided for in the Insurance Code and other applicable laws, report such failure to the Attorney General and request the Attorney General to file a suit to enforce the Board's requirement for refund of premiums. Venue for such suit shall lie in the District Court of Travis County, Texas, and upon finding by the Court that such requirement of the Board was lawfully entered and that the insurer has failed to comply with such requirement; the Court shall enter an appropriate order to enforce such Board order. The Court may

1 enforce its order through contempt proceedings. _____

2 "(c) Compliance or attempts to comply with the Board's
3 requirement to refund premiums shall be an offer to compromise
4 and shall be inadmissible as evidence. Compliance or attempts
5 to comply with the Board's requirement for refund of premium shall
6 not be considered as admission of engaging in an unlawful act or
7 practice. Evidence of compliance or attempts to comply with the
8 Board's requirements of refund or premium may be introduced by
9 the defendant for the purpose of establishing good faith or to
10 show compliance with the Board's requirement. _____

11 "Sec. 15. Injunctions. (a) If the Board has reason to
12 believe that any person in the insurance business in this state
13 is engaging in, has engaged in, or is about to engage in any act
14 or practice declared to be unlawful by this Article or rules or
15 regulations issued under this Article or by Section 17.46 of the
16 Business and Commerce Code, and that proceedings would be in the
17 public interest, the Board may request the Attorney General to
18 bring an action in the name of the state against the person to
19 restrain by temporary or permanent injunction the use of such
20 method, act, or practice. _____

21 "(b) An action brought under Subsection (a) of this section
22 may be commenced in the district court of the county in which the
23 person against whom it is brought resides, has his principal place
24 of business, is doing business, or in the district court of the
25 county where the transaction occurred or any substantial portion
26 of the transaction occurred, or in a district court of Travis _____

1 County. The court may issue appropriate temporary or permanent
2 injunctions, and the injunctions shall be issued without bond.

3 "(c) In addition to the request for a temporary or permanent
4 injunction in a proceeding brought under Subsection (a) of this
5 section, the Attorney General, on a finding by the court that the
6 defendant has engaged or is engaging in a practice declared to
7 be unlawful by Section 17.46 of the Business and Commerce Code,
8 this Article, or rules or regulations issued under this Article,
9 may request a civil penalty of not more than \$2,000 per violation
10 and not to exceed a total of \$10,000 to be paid to the state. _____

11 "(d) The court may make such additional orders or judgments
12 as are necessary to compensate identifiable persons for actual
13 damages or restoration of money or property, real or personal,
14 which may have been acquired by means of any act or practice
15 restrained. Damages may not include any damages incurred beyond
16 a point two years prior to the institution of the action. _____

17 "(e) Any person who violates the terms of an injunction
18 under this section shall forfeit and pay to the state a civil
19 penalty of not more than \$10,000 per violation not to exceed
20 \$50,000. In determining whether or not an injunction has been
21 violated the court shall take into consideration the maintenance
22 of procedures reasonably adapted to insure compliance with the
23 injunction. For the purposes of this section, the district court
24 issuing the injunction shall retain jurisdiction, and the cause
25 shall be continued, and in such cases, the Attorney General with
26 prior notice to the Board, acting in the name of the state, may _____

1 petition for recovery of civil penalties under this section.

2 "(f) An order of the court awarding civil penalties under
3 Subsection (e) of this section applies only to violations of the
4 injunction incurred prior to the awarding of the penalty order.
5 Second or subsequent violations of an injunction issued under
6 this section are subject to the same penalties set out in
7 Subsection (e) of this section.

8 "Sec. 16. Relief Available to Injured Parties. (a) Any
9 person who has been injured by another's engaging in any of the
10 practices declared in Section 4 of this Article or in rules or
11 regulations lawfully adopted by the Board under this Article to
12 be unfair methods of competition and unfair and deceptive acts
13 or practices in the business of insurance or in any practice
14 defined by Section 17.46 of the Business and Commerce Code as an
15 unlawful deceptive trade practice may maintain an action against
16 the company or companies engaging in such acts or practices.

17 "(b) In a suit filed under this section, any plaintiff who
18 prevails may obtain:

19 "(1) three times the amount of actual damages plus
20 court costs and attorneys' fees reasonable in relation to the
21 amount of work expended;

22 "(2) an order enjoining such acts or failure to act;

23 "(3) punitive damages;

24 "(4) any other relief which the Court deems proper.

25 "(c) On a finding by the Court that an action under this
26 section was groundless and brought in bad faith or for the purpose

1 of harassment, the Court may award to the defendant reasonable
2 attorneys' fees in relation to the amount of work expended.

3 "(d) In an action under this section, damages may not
4 include any damages incurred beyond a point two years prior to
5 the institution of the action.

6 "Sec. 17. Class Actions. (a) If a member of the insurance
7 buying public has been damaged by an unlawful method, act, or
8 practice defined in Section 4 of this Article or by the rules and
9 regulations lawfully adopted by the Board under this Article or
10 by any practice defined by Section 17.46 of the Business and
11 Commerce Code as an unlawful deceptive trade practice, the Board
12 may request the Attorney General to bring a class action, or the
13 individual damaged may bring an action on behalf of himself and
14 others similarly situated, to recover damages and relief as
15 provided in this section.

16 "(b) A plaintiff who prevails in a class action under this
17 section may recover:

18 "(1) court costs and attorneys' fees reasonable in
19 relation to the amount of work expended in addition to actual
20 damages;

21 "(2) an order enjoining the act or failure to act;

22 "(3) punitive damages;

23 "(4) any other relief which the Court deems proper.

24 "(c) On a finding by the Court that an action under this
25 section was brought by an individual plaintiff in bad faith or
26 for the purpose of harassment, the Court may award to the defendant

1 reasonable attorneys' fees in relation to the work expended, court
2 costs, and punitive damages._____

3 "(d) In an action under this section, damages may not
4 include any damages incurred beyond a point two years prior to
5 the institution of the action._____

6 "(e) An action under this section may not be maintained
7 or shall be stayed if proceedings regarding an administrative
8 class action under Section 14 of this Article have been initiated
9 regarding the same acts or practices and the same defendant in
10 the action under this section._____

11 "Sec. 18. Class Action: Procedure. (a) The court shall
12 permit one or more members of a class to sue or be sued as
13 representative parties on behalf of the class only if:_____

14 "(1) the class is so numerous that joinder of all
15 members is impracticable;_____

16 "(2) there are questions of law or fact common to
17 the class;_____

18 "(3) the claims or defenses of the representative
19 parties are typical of the claims or defenses of the class; and_____

20 "(4) the representative parties will fairly and
21 adequately protect the interests of the class._____

22 "(b) An action may be maintained as a class action if the
23 prerequisites of Subsection (a) of this section are satisfied and
24 in addition:_____

25 "(1) the prosecution of separate actions by or against
26 individual members of the class would create a risk of:_____

1 "(A) inconsistent or varying adjudications
2 with respect to individual members of the class which would
3 establish incompatible standards of conduct for the party opposing
4 the class; or _____

5 "(B) adjudication with respect to individual
6 members of the class which would as a practical matter be
7 dispositive of the interests of the other members not parties to
8 the adjudications or substantially impair or impede their ability
9 to protect their interests; or _____

10 "(2) the party opposing the class has acted or refused
11 to act on ground generally applicable to the class, thereby making
12 appropriate final injunctive relief or corresponding declaratory
13 relief with respect to the class as a whole; or _____

14 "(3) the court finds that the questions of law or
15 fact common to the members of the class predominate over any
16 questions affecting only individual members, and that a class
17 action is superior to other available methods for the fair and
18 efficient adjudication of the controversy. The matters pertinent
19 to the findings include: _____

20 "(A) the interest of members of the class in
21 individually controlling the prosecution or defense of separate
22 actions; _____

23 "(B) the extent and nature of any litigation
24 concerning the controversy already commenced by or against members
25 of the class; _____

26 "(C) the desirability or undesirability of _____

1 controversy concentrating the litigation of the claims in the
2 particular forum; and_____

3 "(D) the difficulties likely to be encountered
4 in the management of a class action._____

5 "(c) In construing this section, the courts of Texas shall
6 be guided by the decisions of the federal courts interpreting
7 Rule 23, Federal Rules of Civil Procedure._____

8 "(d) As soon as practicable after the commencement of an
9 action brought as a class action, the court shall determine by
10 order whether it is to be maintained as a class action. An order
11 under this subsection may be altered or amended before a decision
12 on the merits. An order determining that the action may or may
13 not be brought as a class action is an interlocutory order which
14 is appealable and the procedures provided in Rule 385, Texas Rules
15 of Civil Procedure, apply._____

16 "(e) If the action is permitted as a class action, the
17 court shall direct to the members of the class the best notice
18 practicable under the circumstances, including individual notice
19 to all members who can be identified through reasonable effort._____

20 "(f) The notice shall contain a statement that:_____

21 "(1) the court will exclude the member notified from
22 the class if he so requests by a specified date;_____

23 "(2) the judgment, whether favorable or not, will
24 include all members who do not request exclusion; and_____

25 "(3) any member who does not request exclusion, if
26 he desires, may enter an appearance through counsel._____

1 "(g) A class action may not be dismissed, settled, or
2 compromised without the approval of the court, and notice of the
3 proposed dismissal, settlement, or compromise shall be given to
4 all members of the class in such manner as the court directs._____

5 "(h) When appropriate, an action may be brought or
6 maintained as a class action with respect to particular issues
7 or a class may be divided into subclasses and each subclass treated
8 as a class, and the provisions of this section shall be construed
9 and applied accordingly._____

10 "(i) The judgment in a class action shall describe those
11 to whom the notice was directed and who have not requested
12 exclusion and those the court finds to be members of the class.
13 The court shall direct to the members of the class the best notice
14 practicable under the circumstances, including individual notice
15 to all members who can be identified through reasonable effort._____

16 "(j) In the conduct of a class action the court may make
17 appropriate orders:_____

18 "(1) determining the course of proceedings or
19 prescribing measures to prevent undue repetition or complication
20 in the presentation of evidence or argument;_____

21 "(2) requiring, for the protection of the members
22 of the class or otherwise for the fair conduct of the action,
23 that notice be given in such manner as the court may direct to
24 some or all of the members or to the Attorney General of any step
25 in the action, or of the proposed extent of the judgment, or of
26 the opportunity of members to signify whether they consider the_____

1 representation fair and adequate, to intervene and present claims
2 or defenses, or otherwise to come into the action;_____

3 "(3) imposing conditions on the representative parties
4 or on intervenors;_____

5 "(4) requiring that the pleadings be amended to
6 eliminate allegations as to representation of absent persons, and
7 that the action proceed accordingly; or_____

8 "(5) dealing with similar procedural matters._____

9 "(k) The filing of a suit under this section tolls the
10 statute of limitations for bringing a suit by an individual under
11 Section 16 of this Article. An order of the court denying the
12 bringing of a suit as a class action does not affect the ability
13 of an individual to bring the same or a similar suit under Section
14 16 of this Article._____

15 "Sec. 19. Preliminary Notice. (a) At least 30 days prior
16 to the commencement of a class action suit for damages under
17 Section 17 of this Article, the prospective plaintiff must notify
18 the intended defendant of his complaint and make demand that the
19 defendant provide relief to the prospective plaintiff and others
20 similarly situated. A copy of the notice must also be sent to
21 the Commissioner of Insurance._____

22 "(b) The notice must be in writing and sent by certified
23 or registered mail, return receipt requested, to the place where
24 the transaction occurred, the intended defendant's principal place
25 of business in this state, or if neither will effect notice, to
26 the office of the Secretary of State of Texas._____

1 "(c) An action for injunctive relief under Section 17 of
2 this Article may be commenced without compliance with Subsection
3 (a) of this section. Not less than 30 days after the commencement
4 of an action for injunctive relief, and after compliance with the
5 provisions of Subsection (a) of this section, the plaintiff may
6 amend his complaint without leave of court to include a request
7 for damages. _____

8 "(d) No damages may be awarded to a class under Section
9 17 of this Article if within 30 days of receipt of the notice the
10 intended defendant furnished the plaintiff, by certified or
11 registered mail, return receipt requested, a written offer of
12 settlement. The offer of settlement must include a statement
13 that: _____

14 "(1) all others similarly situated have been
15 adequately identified or a reasonable effort to identify such
16 others has been made, and a description of the class so identified
17 and the method employed to identify them: _____

18 "(2) all persons so identified have been notified
19 that upon request the intended defendant will provide relief to
20 them and all others similarly situated, and a complete explanation
21 of the relief being afforded and a copy of the notice or
22 communication which the intended defendant is providing to the
23 members of the class: _____

24 "(3) the remedy requested by the plaintiff has been,
25 or within a stated reasonable period of time, will be given; and _____

26 "(4) the practice complained of has ceased, _____

1 "(e) Attempts to comply with the provisions of this section
2 by a person receiving a demand shall be an offer to compromise
3 and shall be inadmissible as evidence. Attempts to comply with
4 a demand shall not be considered an admission of engaging in an
5 unlawful act or practice. Evidence of compliance or attempts to
6 comply with the provisions of this section may be introduced by
7 a defendant for the purpose of establishing good faith or to show
8 compliance with the provisions of this section._____

9 "Sec. 20. Damages: Defense. No award of damages may be
10 given in any class action filed under Section 17 of this Article
11 if the defendant:_____

12 "(1) proves that the action complained of resulted
13 from a bona fide error notwithstanding the use of reasonable
14 procedures adopted to avoid any error; and_____

15 "(2) made restitution of any consideration received
16 from any member of the class._____

17 "Sec. 21. Venue. Any action brought under this Article
18 shall be commenced in a district court of Travis County, Texas,
19 if the State Board of Insurance is a party thereto._____

20 "Sec. 22. Voluntary Compliance. (a) In the administration
21 of this Article the Board may accept assurance of voluntary
22 compliance with respect to any act or practice which violates
23 this Article or regulations issued under this Article or any act
24 declared to be unlawful in Section 17.46 of the Business and
25 Commerce Code from any person who is engaging in, has engaged in,
26 or is about to engage in the act or practice. The assurance shall_____

1 be in writing and shall be filed with the Board.

2 "(b) The acceptance of an assurance of voluntary compliance
3 may be conditioned on the stipulation that the person in violation
4 of this Article or regulations issued under this Article, or
5 Section 17.46, Business and Commerce Code, restore to any person
6 in interest any money which may have been acquired by means of
7 acts or practices which violate this Article or regulations issued
8 under this Article, or Section 17.46, Business and Commerce Code.

9 "(c) An assurance of voluntary compliance shall not be
10 considered an admission of prior violation of this Article or
11 regulations issued under this Article or Section 17.46, Business
12 and Commerce Code. However, unless an assurance has been rescinded
13 by agreement, subsequent failure to comply with the terms of an
14 assurance is prima facie evidence of a violation of this Article
15 or regulations issued under this Article or Section 17.46, Business
16 and Commerce Code.

17 "(d) Matters closed by the filing of an assurance of
18 voluntary compliance may be reopened at any time. Assurance of
19 voluntary compliance shall in no way affect individual rights of
20 action under this Article, except that the right of individuals
21 with regard to money received pursuant to a stipulation in the
22 voluntary compliance under Subsection (b) of this section are
23 governed by the terms of the voluntary compliance.

24 "Sec. 23. Those civil penalties, premium refunds, judgments,
25 compensatory judgments, individual recoveries, orders, class
26 action awards, costs, damages, or attorneys' fees which are

assessed or awarded as provided in this Article shall be paid only from the capital or surplus funds of the offending insurance company, and no such payments shall take precedence over, be in priority to, or in any manner be applicable to the provisions of Article 21.28-B, Insurance Code, known as the Loss Claimants Priorities Act, Article 21.28-C, Insurance Code, known as the Property and Casualty Insurance Guaranty Act, Article 21.28-E, Insurance Code, known as the Life, Health and Accident Guaranty Act, any other similar insurance guaranty act hereafter enacted by the Texas Legislature, or Article 21.39-A, Insurance Code, known as the Asset Protection Act, and such special statutes and the priorities or funds created thereby shall be exempt from the provisions of this Article.

"Sec. 24. No remedy or civil penalty shall lie or exist by reason of any act or omission occurring prior to the effective date of this Act."

Sec. 3. Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Article 5069-10.01, et seq., Vernon's Texas Civil Statutes), is repealed.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 5. The importance of this legislation and the crowded

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1 condition of the calendars in both houses create an emergency and
2 an imperative public necessity that the constitutional rule
3 requiring bills to be read on three several days in each house
4 be suspended, and this rule is hereby suspended, and that this
5 Act take effect and be in force from and after its passage, and
6 it is so enacted.

ENROLLED

H.B. No. 417

AN ACT

relating to the definition and regulation of deceptive and unlawful trade practices, advertising or acts including unlawful competition, acts or practices of insurers, and protection of consumers; providing administrative and judicial remedies and procedures for carrying out the Act; providing civil penalties for violations; prescribing the extent of the applicability of the Act; providing for class actions; amending Chapter 17, Business & Commerce Code, as amended, by adding Subchapter E; repealing Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Articles 5069-10.01 et seq., Vernon's Texas Civil Statutes); amending Sections 13 and 7, Article 21.21, Insurance Code, as amended, and adding new Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Chapter 17, Business & Commerce Code, as amended, is amended by adding Subchapter E to read as follows:

**"SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND
CONSUMER PROTECTION**

"Section 17.41. SHORT TITLE. This subchapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

"Section 17.42. WAIVERS: PUBLIC POLICY. Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void.

"Section 17.43. CUMULATIVE REMEDIES. The provisions of

1 this subchapter are not exclusive. The remedies provided in this
2 subchapter are in addition to any other procedures or remedies
3 provided for in any other law. The provisions of this subchapter
4 do not in any way preclude other political subdivisions of this
5 state from dealing with deceptive trade practices.

6 "Section 17.44. CONSTRUCTION AND APPLICATION. This
7 subchapter shall be liberally construed and applied to promote
8 its underlying purposes, which are to protect consumers against
9 false, misleading, and deceptive business practices, unconscionable
10 actions, and breaches of warranty and to provide efficient and
11 economical procedures to secure such protection.

12 "Section 17.45. DEFINITIONS. As used in this subchapter:

13 "(1) 'Goods' means tangible chattels bought for use.

14 "(2) 'Services' means work, labor, and services for
15 other than commercial or business use, including services furnished
16 in connection with the sale or repair of goods.

17 "(3) 'Person' means an individual, partnership,
18 corporation, association, or other group, however organized.

19 "(4) 'Consumer' means an individual who seeks or
20 acquires by purchase or lease, any goods or services.

21 "(5) 'Merchant' means a party to a consumer
22 transaction other than a consumer.

23 "(6) 'Trade' and 'commerce' mean the advertising,
24 offering for sale, sale, lease, or distribution of any good or
25 service, of any property, tangible or intangible, real, personal,
26 or mixed, and any other article, commodity, or thing of value,

1 wherever situated, and shall include any trade or commerce directly
2 or indirectly affecting the people of this state.

3 "(7) 'Documentary material' includes the original
4 or a copy of any book, record, report, memorandum, paper,
5 communication, tabulation, map, chart, photograph, mechanical
6 transcription, or other tangible document or recording, wherever
7 situated.

8 "(8) 'Consumer protection division' means the
9 antitrust and consumer protection division of the attorney
10 general's office.

11 "(9) 'Knowingly' means actual awareness of the falsity
12 or deception, but actual awareness may be inferred where objective
13 manifestations indicate that a person acted with actual awareness.

14 "Section 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL.

15 "(a) False, misleading, or deceptive acts or practices in
16 the conduct of any trade or commerce are hereby declared unlawful.

17 "(b) The term 'false, misleading, or deceptive acts or
18 practices' includes, but is not limited to, the following acts:

19 "(1) passing off goods or services as those of
20 another;

21 "(2) causing confusion or misunderstanding as to the
22 source, sponsorship, approval, or certification of goods or
23 services;

24 "(3) causing confusion or misunderstanding as to
25 affiliation, connection, or association with, or certification
26 by, another;

1 "(4) using deceptive representations or designations
2 of geographic origin in connection with goods or services;

3 "(5) representing that goods or services have
4 sponsorship, approval, characteristics, ingredients, uses,
5 benefits, or quantities which they do not have or that a person
6 has a sponsorship, approval, status, affiliation, or connection
7 which he does not;

8 "(6) representing that goods are original or new if
9 they are deteriorated, reconditioned, reclaimed, used, or
10 secondhand;

11 "(7) representing that goods or services are of a
12 particular standard, quality, or grade, or that goods are of a
13 particular style or model, if they are of another;

14 "(8) disparaging the goods, services, or business
15 of another by false or misleading representation of facts;

16 "(9) advertising goods or services with intent not
17 to sell them as advertised;

18 "(10) advertising goods or services with intent not
19 to supply a reasonable expectable public demand, unless the
20 advertisements disclosed a limitation of quantity;

21 "(11) making false or misleading statements of fact
22 concerning the reasons for, existence of, or amount of price
23 reductions;

24 "(12) representing that an agreement confers or
25 involves rights, remedies, or obligations which it does not have
26 or involve, or which are prohibited by law;

1 "(13) knowingly making false or misleading statements
2 of fact concerning the need for parts, replacement, or repair
3 service;

4 "(14) misrepresenting the authority of a salesman,
5 representative or agent to negotiate the final terms of a consumer
6 transaction;

7 "(15) basing a charge for the repair of any item in
8 whole or in part on a guaranty or warranty instead of on the value
9 of the actual repairs made or work to be performed on the item
10 without stating separately the charges for the work and the charge
11 for the warranty or guaranty, if any;

12 "(16) disconnecting, turning back, or resetting the
13 odometer of any motor vehicle so as to reduce the number of miles
14 indicated on the odometer gauge;

15 "(17) advertising of any sale by fraudulently
16 representing that a person is going out of business;

17 "(18) using or employing a chain referral sales plan
18 in connection with the sale or offer to sell of goods, merchandise,
19 or anything of value, which uses the sales technique, plan,
20 arrangement, or agreement in which the buyer or prospective buyer
21 is offered the opportunity to purchase merchandise or goods and
22 in connection with the purchase receives the seller's promise or
23 representation that the buyer shall have the right to receive
24 compensation or consideration in any form for furnishing to the
25 seller the names of other prospective buyers if receipt of the
26 compensation or consideration is contingent upon the occurrence

1 of an event subsequent to the time the buyer purchases the
2 merchandise or goods;

3 "(19) representing that a guarantee or warranty
4 confers or involves rights or remedies which it does not have or
5 involve, provided, however, that nothing in this subchapter shall
6 be construed to expand the implied warranty of merchantability
7 as defined in Sections 2.314 through 2.318 of the Business &
8 Commerce Code to involve obligations in excess of those which are
9 appropriate to the goods; or

10 "(20) selling or offering to sell, either directly
11 or associated with the sale of goods or services, a right of
12 participation in a multi-level distributorship. As used herein,
13 'multi-level distributorship' means a sales plan for the
14 distribution of goods or services in which promises of rebate or
15 payment are made to individuals, conditioned upon those individuals
16 recommending or securing additional individuals to assume positions
17 in the sales operation, and where the rebate or payment is not
18 exclusively conditioned on or in relation to proceeds from the
19 retail sales of goods.

20 "(c) It is the intent of the legislature that in construing
21 Subsection (a) of this section the courts to the extent possible
22 will be guided by Subsection (b) of this section and the
23 interpretations given by the Federal Trade Commission and federal
24 courts to Section 5(a)(1) of the Federal Trade Commission Act [15
25 U.S.C.A. 45(a)(1)].

26 "Section 17.47. RESTRAINING ORDERS. (a) Whenever the

1 consumer protection division has reason to believe that any person
2 is engaging in, has engaged in, or is about to engage in any act
3 or practice declared to be unlawful by this subchapter, and that
4 proceedings would be in the public interest, the division may
5 bring an action in the name of the state against the person to
6 restrain by temporary or permanent injunction the use of such
7 method, act, or practice. The consumer protection division may
8 bring any action under this section against a licensed insurer
9 or insurance agent for a violation of this subchapter, Article
10 21.21, Texas Insurance Code, as amended, or the rules and
11 regulations of the State Board of Insurance issued under Article
12 21.21, Texas Insurance Code, as amended, only on the written
13 request of the State Board of Insurance or the commissioner of
14 insurance.

15 "Nothing herein shall require the consumer protection
16 division to notify such person that court action is or may be
17 under consideration. Provided, however, the consumer protection
18 division shall, at least seven days prior to instituting such
19 court action, contact such person to inform him in general of the
20 alleged unlawful conduct. Cessation of unlawful conduct after
21 such prior contact shall not render such court action moot under
22 any circumstances, and such injunctive relief shall lie even if
23 such person has ceased such unlawful conduct after such prior
24 contact. Such prior contact shall not be required if, in the
25 opinion of the consumer protection division, there is good cause
26 to believe that such person would evade service of process if

1 prior contact were made or that such person would destroy relevant
2 records if prior contact were made.

3 "(b) An action brought under Subsection (a) of this section
4 may be commenced in the district court of the county in which the
5 person against whom it is brought resides, has his principal place
6 of business, is doing business, or in the district court of the
7 county where the transaction occurred, or, on the consent of the
8 parties, in a district court of Travis County. The court may
9 issue temporary or permanent injunctions to restrain and prevent
10 violations of this subchapter and the injunctions shall be issued
11 without bond.

12 "(c) In addition to the request for a temporary or permanent
13 injunction in a proceeding brought under Subsection (a) of this
14 section, the consumer protection division, on a finding by the
15 court that the defendant has engaged or is engaging in a practice
16 declared to be unlawful by this subchapter, may request a civil
17 penalty of not more than \$2,000 per violation, not to exceed a
18 total of \$10,000, to be paid to the state.

19 "(d) The court may make such additional orders or judgments
20 as are necessary to compensate identifiable persons for actual
21 damages or restoration of money or property, real or personal,
22 which may have been acquired by means of any act or practice
23 restrained. Damages may not include any damages incurred beyond
24 a point two years prior to the institution of the action by the
25 consumer protection division. Orders of the court may also include
26 the appointment of a receiver or a sequestration of assets if a

1 person who has been ordered by a court to make restitution under
2 this section has failed to do so within three months after the
3 order to make restitution has become final and nonappealable.

4 "(e) Any person who violates the terms of an injunction
5 under this section shall forfeit and pay to the state a civil
6 penalty of not more than \$10,000 per violation, not to exceed
7 \$50,000. In determining whether or not an injunction has been
8 violated the court shall take into consideration the maintenance
9 of procedures reasonably adapted to insure compliance with the
10 injunction. For the purposes of this section, the district court
11 issuing the injunction shall retain jurisdiction, and the cause
12 shall be continued, and in these cases, the consumer protection
13 division, or the district or county attorney with prior notice
14 to the consumer protection division, acting in the name of the
15 state, may petition for recovery of civil penalties under this
16 section.

17 "(f) An order of the court awarding civil penalties under
18 Subsection (e) of this section applies only to violations of the
19 injunction incurred prior to the awarding of the penalty order.
20 Second or subsequent violations of an injunction issued under
21 this section are subject to the same penalties set out in
22 Subsection (e) of this section.

23 "Section 17.48. DUTY OF DISTRICT AND COUNTY ATTORNEY.

24 "(a) It is the duty of the district and county attorneys
25 to lend to the consumer protection division any assistance
26 requested in the commencement and prosecutions of action under

1 this subchapter.

2 "(b) A district or county attorney, with prior written
3 notice to the consumer protection division, may institute and
4 prosecute actions seeking injunctive relief under this subchapter,
5 after complying with the prior contact provisions of Subsection
6 (a) of Section 17.47 of this subchapter. On request, the consumer
7 protection division shall assist the district or county attorney
8 in any action taken under this subchapter. If an action is
9 prosecuted by a district or county attorney alone, he shall make
10 a full report to the consumer protection division including the
11 final disposition of the matter. No district or county attorney
12 may bring an action under this section against any licensed insurer
13 or licensed insurance agent transacting business under the
14 authority and jurisdiction of the State Board of Insurance unless
15 first requested in writing to do so by the State Board of
16 Insurance, the commissioner of insurance, or the consumer
17 protection division pursuant to a request by the State Board of
18 Insurance or commissioner of insurance.

19 "Section 17.49. EXEMPTIONS. (a) Nothing in this subchapter
20 shall apply to the owner or employees of a regularly published
21 newspaper, magazine, or telephone directory, or broadcast station,
22 or billboard, wherein any advertisement in violation of this
23 subchapter is published or disseminated, unless it is established
24 that the owner or employees of the advertising medium have
25 knowledge of the false, deceptive, or misleading acts or practices
26 declared to be unlawful by this subchapter, or had a direct or

1 substantial financial interest in the sale or distribution of the
2 unlawfully advertised good or service. Financial interest as
3 used in this section relates to an expectation which would be the
4 direct result of such advertisement.

5 "(b) Nothing in this subchapter shall apply to acts or
6 practices authorized under specific rules or regulations
7 promulgated by the Federal Trade Commission under Section 5(a)(1)
8 of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The
9 provisions of this subchapter do apply to any act or practice
10 prohibited or not specifically authorized by a rule or regulation
11 of the Federal Trade Commission. An act or practice is not
12 specifically authorized if no rule or regulation has been issued
13 on the act or practice.

14 "Section 17.50. RELIEF FOR CONSUMERS. (a) A consumer may
15 maintain an action if he has been adversely affected by any of
16 the following:

17 "(1) the use or employment by any person of an act
18 or practice declared to be unlawful by Section 17.46 of this
19 subchapter;

20 "(2) a failure by any person to comply with an express
21 or implied warranty;

22 "(3) any unconscionable action or course of action
23 by any person; or

24 "(4) the use or employment by any person of an act
25 or practice in violation of Article 21.21, Texas Insurance Code,
26 as amended, or rules or regulations issued by the State Board of

1 Insurance under Article 21.21, Texas Insurance Code, as amended.

2 "(b) In a suit filed under this section, each consumer who
3 prevails may obtain:

4 "(1) three times the amount of actual damages plus
5 court costs and attorneys' fees reasonable in relation to the
6 amount of work expended;

7 "(2) an order enjoining such acts or failure to act;

8 "(3) orders necessary to restore to any party to the
9 suit any money or property, real or personal, which may have been
10 acquired in violation of this subchapter; and

11 "(4) any other relief which the court deems proper,
12 including the appointment of a receiver or the revocation of a
13 license or certificate authorizing a person to engage in business
14 in this state if the judgment has not been satisfied within three
15 months of the date of the final judgment. The court may not
16 revoke or suspend a license to do business in this state or appoint
17 a receiver to take over the affairs of a person who has failed
18 to satisfy a judgment if the person is a licensee of or regulated
19 by a state agency which has statutory authority to revoke or
20 suspend a license or to appoint a receiver or trustee.

21 "(c) On a finding by the court that an action under this
22 section was groundless and brought in bad faith or for the purpose
23 of harassment, the court may award to the defendant reasonable
24 attorneys' fees in relation to the amount of work expended, and
25 court costs.

26 "Section 17.51. CLASS ACTIONS. (a) If a consumer has

1 been damaged in an amount in excess of \$10 by an unlawful method,
 2 act, or practice contained in Subsection (b) of Section 17.46 of
 3 this subchapter, an act or practice in violation of Article 21.21,
 4 Texas Insurance Code, as amended, or rules or regulations issued
 5 by the State Board of Insurance under Article 21.21, Texas
 6 Insurance Code, as amended, or by an act or practice or type of
 7 act or practice occurring subsequent to the time the act or
 8 practice or type of act or practice was declared unlawful or
 9 deceptive to the consumer by a final judgment of an appellate
 10 court of proper jurisdiction and venue of this state that was
 11 reported officially, a consumer may bring an action on behalf of
 12 himself and other consumers if the unlawful act or practice has
 13 caused damage to the other consumers who are similarly situated,
 14 to recover damages and relief as provided in this subchapter.

15 "(b) A plaintiff who prevails in a class action under this
 16 subchapter may recover:

17 "(1) court costs and attorneys' fees reasonable in
 18 relation to the amount of work expended in addition to actual
 19 damages;

20 "(2) an order enjoining the act or failure to act;

21 "(3) any orders which may be necessary to restore
 22 to any party to the suit any money or property, real or personal,
 23 which may have been acquired in violation of this subchapter; and

24 "(4) any other relief which the court deems proper
 25 including the appointment of a receiver or revocation of a license
 26 or certificate to engage in business in this state if the judgment

1 has not been satisfied within six months of the date of issuance
2 of the final judgment. The court may not revoke or suspend a
3 license to do business in this state or appoint a receiver to
4 take over the affairs of a person who has failed to satisfy a
5 judgment if the person is a licensee of or regulated by a state
6 agency which has statutory authority to revoke or suspend a license
7 or to appoint a receiver or trustee.

8 "(c) On a finding by the court that an action under this
9 section was brought in bad faith or for purposes of harassment,
10 the court may award to the defendant reasonable attorneys' fees
11 in relation to the work expended, and court costs.

12 "(d) An action under this section may not be maintained
13 or shall be stayed if proceedings regarding an administrative
14 class action under Section 14, Article 21.21, Texas Insurance
15 Code, as amended, have been initiated regarding the same acts or
16 practices and the same defendant in the action under this section.

17 "Section 17.52. CLASS ACTION: PROCEDURE. (a) The court
18 shall permit one or more members of a class to sue or be sued as
19 representative parties on behalf of the class only if:

20 "(1) the class is so numerous that joinder of all
21 members is impracticable;

22 "(2) there are questions of law or fact common to
23 the class;

24 "(3) the claims or defenses of the representative
25 parties are typical of the claims or defenses of the class; and

26 "(4) the representative parties will fairly and

1 adequately protect the interests of the class.

2 "(b) An action may be maintained as a class action if the
3 prerequisites of Subsection (a) of this section are satisfied and
4 in addition;

5 "(1) the prosecution of separate actions by or against
6 individual members of the class would create a risk of:

7 "(A) inconsistent or varying adjudications
8 with respect to individual members of the class which would
9 establish incompatible standards of conduct for the party opposing
10 the class; or

11 "(B) adjudications with respect to individual
12 members of the class which would as a practical matter be
13 dispositive of the interests of the other members not parties to
14 the adjudications or substantially impair or impede their ability
15 to protect their interests; or

16 "(2) the party opposing the class has acted or refused
17 to act on grounds generally applicable to the class, thereby
18 making appropriate final injunctive relief or corresponding
19 declaratory relief with respect to the class as a whole; or

20 "(3) the court finds that the questions of law or
21 fact common to the members of the class predominate over any
22 questions affecting only individual members, and that a class
23 action is superior to other available methods for the fair and
24 efficient adjudication of the controversy. The matters pertinent
25 to the findings include:

26 "(A) the interest of members of the class in

1 individually controlling the prosecution or defense of separate
2 actions;

3 "(B) the extent and nature of any litigation
4 concerning the controversy already commenced by or against members
5 of the class;

6 "(C) the desirability or undesirability of
7 controversy concentrating the litigation of the claims in the
8 particular forum; and

9 "(D) the difficulties likely to be encountered
10 in the management of a class action.

11 "(c) In construing this section, the courts of Texas shall
12 be guided by the decisions of the federal courts interpreting
13 Rule 23, Federal Rules of Civil Procedure.

14 "(d) As soon as practicable after the commencement of an
15 action brought as a class action, the court shall determine by
16 order whether it is to be maintained as a class action. An order
17 under this subsection may be altered or amended before a decision
18 on the merits. An order determining that the action may or may
19 not be brought as a class action is an interlocutory order which
20 is appealable and the procedures provided in Rule 385, Texas Rules
21 of Civil Procedure, apply.

22 "(e) If the action is permitted as a class action, the
23 court shall direct to the members of the class the best notice
24 practicable under the circumstances, including individual notice
25 to all members who can be identified through reasonable effort.

26 "(f) The notice shall contain a statement that:

1 "(1) the court will exclude the member notified from
2 the class if he so requests by a specified date;

3 "(2) the judgment, whether favorable or not, will
4 include all members who do not request exclusion; and

5 "(3) any member who does not request exclusion, if
6 he desires, may enter an appearance through counsel.

7 "(g) A class action may not be dismissed, settled, or
8 compromised without the approval of the court, and notice of the
9 proposed dismissal, settlement, or compromise shall be given to
10 all members of the class in such manner as the court directs.

11 "(h) When appropriate, an action may be brought or
12 maintained as a class action with respect to particular issues
13 or a class may be divided into subclasses and each subclass treated
14 as a class, and the provisions of this section shall be construed
15 and applied accordingly.

16 "(i) The judgment in a class action shall describe those
17 to whom the notice was directed and who have not requested
18 exclusion and those the court finds to be members of the class.
19 The court shall direct to the members of the class the best notice
20 practicable under the circumstances, including individual notice
21 to all members who can be identified through reasonable effort.

22 "(j) In the conduct of a class action the court may make
23 appropriate orders:

24 "(1) determining the course of proceedings or
25 prescribing measures to prevent undue repetition or complication
26 in the presentation of evidence or argument;

1 "(2) requiring, for the protection of the members
2 of the class or otherwise for the fair conduct of the action,
3 that notice be given in such manner as the court may direct to
4 some or all of the members or to the attorney general of any step
5 in the action, or of the proposed extent of the judgment, or of
6 the opportunity of members to signify whether they consider the
7 representation fair and adequate, to intervene and present claims
8 or defenses, or otherwise to come into the action;

9 "(3) imposing conditions on the representative parties
10 or on intervenors;

11 "(4) requiring that the pleadings be amended to
12 eliminate allegations as to representation of absent persons, and
13 that the action proceed accordingly; or

14 "(5) dealing with similar procedural matters.

15 "(k) The filing of a suit under this section tolls the
16 statute of limitations for bringing a suit by an individual under
17 Section 17.50 of this subchapter. An order of the court denying
18 the bringing of a suit as a class action does not affect the
19 ability of an individual to bring the same or a similar suit under
20 Section 17.50 of this subchapter.

21 "Section 17.53. PRELIMINARY NOTICE. (a) At least 30 days
22 prior to the commencement of a suit for damages under Section
23 17.51 of this subchapter, the consumer must notify the intended
24 defendant of his complaint and make demand that the defendant
25 provide relief to the consumer and others similarly situated.

26 "(b) The notice must be in writing and sent by certified

1 or registered mail, return receipt requested, to the place where
2 the transaction occurred, the intended defendants' principal place
3 of business in this state, or if neither will effect notice, to
4 the office of the Secretary of State of Texas.

5 "(c) An action for injunctive relief under Section 17.51
6 of this subchapter may be commenced without compliance with
7 Subsection (a) of this section. Not less than 30 days after the
8 commencement of an action for injunctive relief, and after
9 compliance with the provisions of Subsection (a) of this section,
10 the consumer may amend his complaint without leave of court to
11 include a request for damages.

12 "(d) No damages may be awarded to a consumer class under
13 this section if within 30 days of receipt of the notice the
14 intended defendant furnished the consumer, by certified or
15 registered mail, return receipt requested, a written offer of
16 settlement. The offer of settlement must include a statement
17 that:

18 "(1) all consumers similarly situated have been
19 adequately identified or a reasonable effort to identify such
20 other consumers has been made, and a description of the class so
21 identified and the method employed to identify them;

22 "(2) all consumers so identified have been notified
23 that upon their request the intended defendant will provide relief
24 to the consumer and all others similarly situated, and a complete
25 explanation of the relief being afforded and a copy of the notice
26 or communication which the intended defendant is providing to the

1 members of the class;

2 "(3) the relief being afforded the consumer has been,
3 or if said offer is accepted by the consumer, will be given within
4 a stated reasonable period of time; and

5 "(4) the practice complained of has ceased.

6 "(e) Attempts to comply with the provisions of this section
7 by a person receiving a demand shall be an offer to compromise
8 and shall be inadmissible as evidence. Attempts to comply with
9 a demand shall not be considered an admission of engaging in an
10 unlawful act or practice. Evidence of compliance or attempts to
11 comply with the provisions of this section may be introduced by
12 a defendant for the purpose of establishing good faith or to show
13 compliance with the provisions of this section.

14 "Section 17.54. DAMAGES: DEFENSE. No award of damages
15 may be given in any action filed under Section 17.51 of this
16 subchapter if the defendant:

17 "(1) proves that the action complained of resulted
18 from a bona fide error notwithstanding the use of reasonable
19 procedures adopted to avoid any error; and

20 "(2) made restitution of any consideration received
21 from any member of the class.

22 "Section 17.55. PROMOTIONAL MATERIAL. If damages or civil
23 penalties are assessed against the seller of goods or services
24 for advertisements or promotional material in a suit filed under
25 Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the
26 seller of the goods or services has a cause of action against a

1 third party for the amount of damages or civil penalties assessed
2 against the seller plus attorneys' fees on a showing that:

3 "(1) the seller received the advertisements or
4 promotional material from the third party;

5 "(2) the seller's only action with regard to the
6 advertisements or promotional material was to disseminate the
7 material; and

8 "(3) the seller has ceased disseminating the material.

9 "Section 17.56. VENUE. An action brought under Section
10 17.50 or 17.51 of this subchapter may be commenced in the county
11 in which the person against whom the suit is brought resides, has
12 his principal place of business, or is doing business.

13 "Section 17.57. SUBPOENAS. The clerk of a district court
14 at the request of any party to a suit pending in his court which
15 is brought under this subchapter shall issue a subpoena for any
16 witness or witnesses who may be represented to reside within 100
17 miles of the courthouse of the county in which the suit is pending
18 or who may be found within such distance at the time of trial.
19 The clerk shall issue a separate subpoena and a copy thereof for
20 each witness subpoenaed. When an action is pending in Travis
21 County on the consent of the parties a subpoena may be issued for
22 any witness or witnesses who may be represented to reside within
23 100 miles of the courthouse of a county in which the suit could
24 otherwise have been brought or who may be found within such
25 distance at the time of the trial.

26 "Section 17.58. VOLUNTARY COMPLIANCE. (a) In the

1 administration of this subchapter the consumer protection division
2 may accept assurance of voluntary compliance with respect to any
3 act or practice which violates this subchapter from any person
4 who is engaging in, has engaged in, or is about to engage in the
5 act or practice. The assurance shall be in writing and shall be
6 filed with and subject to the approval of the district court in
7 the county in which the alleged violator resides or does business
8 or in the district court of Travis County.

9 "(b) The acceptance of an assurance of voluntary compliance
10 may be conditioned on the stipulation that the person in violation
11 of this subchapter restore to any person in interest any money
12 or property, real or personal, which may have been acquired by
13 means of acts or practices which violate this subchapter.

14 "(c) An assurance of voluntary compliance shall not be
15 considered an admission of prior violation of this subchapter.
16 However, unless an assurance has been rescinded by agreement of
17 the parties or voided by a court for good cause, subsequent failure
18 to comply with the terms of an assurance is prima facie evidence
19 of a violation of this subchapter.

20 "(d) Matters closed by the filing of an assurance of
21 voluntary compliance may be reopened at any time. Assurances of
22 voluntary compliance shall in no way affect individual rights of
23 action under this subchapter, except that the rights of individuals
24 with regard to money or property received pursuant to a stipulation
25 in the voluntary compliance under Subsection (b) of this section
26 are governed by the terms of the voluntary compliance.

1 "Section 17.59. POWERS OF RECEIVER. (a) When a receiver
2 is appointed by the court under this subchapter, he shall have
3 the power to sue for, collect, receive, and take into his
4 possession all the goods and chattels, rights and credits, money,
5 and effects, lands, tenements, books, records, documents, papers,
6 choses in action, bills, notes, and property of every description,
7 derived by means of any practice declared to be illegal and
8 prohibited by this subchapter, including property with which such
9 property has been mingled if it cannot be identified in kind
10 because of the commingling, and to sell, convey, and assign the
11 property and hold and dispose of the proceeds under the direction
12 of the court. Any person who has suffered damages as a result
13 of use or employment of any unlawful practices and submits proof
14 to the satisfaction of the court that he has in fact been damaged,
15 may participate with general creditors in the distribution of the
16 assets to the extent he has sustained out-of-pocket losses. In
17 the case of a partnership or business entity, the receiver shall
18 settle the estate and distribute the assets under the direction
19 of the court. The court shall have jurisdiction of all questions
20 arising in the proceedings and may make any orders or judgments
21 required.

22 "(b) If the claims of consumers remain unsatisfied after
23 distribution of the assets, the court may order that all persons
24 who knowingly participated in the unlawful enterprise be held
25 jointly and severally liable to the extent of the unsatisfied
26 consumer claims if such person:

1 "(1) contributed substantial personal services,
2 money, credit, real, personal, or mixed property, or any other
3 thing of substantial value with the expectation of sharing in the
4 profits of the enterprise; and

5 "(2) had knowledge or should have had knowledge of
6 the unlawful purpose of the enterprise at the time such things
7 of value were contributed, or freely continued in the association
8 or other relationship after gaining knowledge of the unlawful
9 purpose of the enterprise.

10 "Section 17.60. REPORTS AND EXAMINATIONS. Whenever the
11 consumer protection division has reason to believe that a person
12 is engaging in, has engaged in, or is about to engage in any act
13 or practice declared to be unlawful by this subchapter, or when
14 it reasonably believes it to be in the public interest to conduct
15 an investigation to ascertain whether any person is engaging in,
16 has engaged in, or is about to engage in any such act or practice,
17 an authorized member of the division may:

18 "(1) require the person to file on the prescribed
19 forms a statement or report in writing, under oath or otherwise,
20 as to all the facts and circumstances concerning the alleged
21 violation and such other data and information as the consumer
22 protection division deems necessary;

23 "(2) examine under oath any person in connection
24 with this alleged violation;

25 "(3) examine any merchandise or sample of merchandise
26 deemed necessary and proper; and

1 "(4) pursuant to an order of the appropriate court,
2 impound any sample of merchandise that is produced in accordance
3 with this subchapter and retain it in the possession of the
4 division until the completion of all proceedings in connection
5 with which the merchandise is produced.

6 "This section shall not apply to licensed insurers or
7 licensed insurance agents transacting an insurance business in
8 this state under the authority and jurisdiction of the State Board
9 of Insurance unless the State Board of Insurance or the Insurance
10 Commissioner has requested in writing that the consumer protection
11 division file an action under Section 17.47 of this subchapter.

12 "Section 17.61. CIVIL INVESTIGATIVE DEMAND. (a) Whenever
13 the consumer protection division believes that any person may be
14 in possession, custody, or control of the original copy of any
15 documentary material relevant to the subject matter of an
16 investigation of a possible violation of this subchapter, an
17 authorized agent of the division may execute in writing and serve
18 on the person a civil investigative demand requiring the person
19 to produce the documentary material and permit inspection and
20 copying. This section shall not apply to licensed insurers or
21 licensed insurance agents transacting an insurance business in
22 this state under the authority and jurisdiction of the State Board
23 of Insurance unless the State Board of Insurance or the Insurance
24 Commissioner has requested in writing that the consumer protection
25 division file an action under Section 17.47 of this subchapter.

26 "(b) Each demand shall:

1 "(1) state the statute and section under which the
2 alleged violation is being investigated, and the general subject
3 matter of the investigation;

4 "(2) describe the class or classes of documentary
5 material to be produced with reasonable specificity so as to
6 fairly indicate the material demanded;

7 "(3) prescribe a return date within which the
8 documentary material is to be produced; and

9 "(4) identify the members of the consumer protection
10 division to whom the documentary material is to be made available
11 for inspection and copying.

12 "(c) A civil investigative demand may contain a requirement
13 or disclosure of documentary material which would be discoverable
14 under the Texas Rules of Civil Procedure.

15 "(d) Service of any demand may be made by:

16 "(1) delivering a duly executed copy of the demand
17 to the person to be served or to a partner or to any officer or
18 agent authorized by appointment or by law to receive service of
19 process on behalf of that person;

20 "(2) delivering a duly executed copy of the demand
21 to the principal place of business in the state of the person to
22 be served;

23 "(3) mailing by registered mail or certified mail
24 a duly executed copy of the demand addressed to the person to be
25 served at the principal place of business in this state, or if
26 the person has no place of business in this state, to his principal

1 office or place of business.

2 "(e) Documentary material demanded pursuant to this section
3 shall be produced for inspection and copying during normal business
4 hours at the principal office or place of business of the person
5 served, or at other times and places as may be agreed on by the
6 person served and the consumer protection division.

7 "(f) No documentary material produced pursuant to a demand
8 under this section, unless otherwise ordered by a court for good
9 cause shown, shall be produced for inspection or copying by, nor
10 shall its contents be disclosed to any person other than the
11 authorized employee of the consumer protection division without
12 the consent of the person who produced the material. The consumer
13 protection division shall prescribe reasonable terms and conditions
14 allowing the documentary material to be available for inspection
15 and copying by the person who produced the material or any duly
16 authorized representative of that person. The consumer protection
17 division may use the documentary material or copies of it as it
18 determines necessary in the enforcement of this subchapter,
19 including presentation before any court. Any material which
20 contains trade secrets shall not be presented except with the
21 approval of the court in which the action is pending after adequate
22 notice to the person furnishing the material.

23 "(g) At any time before the return date specified in the
24 demand, or within 20 days after the demand has been served,
25 whichever period is shorter, a petition to extend the return date
26 for, or to modify or set aside the demand, stating good cause,

1 may be filed in the district court in the county where the parties
2 reside, or a district court of Travis County.

3 "(h) A person on whom a demand is served under this section
4 shall comply with the terms of the demand unless otherwise provided
5 by a court order.

6 "(i) Personal service of a similar investigative demand
7 under this section may be made on any person outside of this state
8 if the person has engaged in conduct in violation of this
9 subchapter. Such persons shall be deemed to have submitted
10 themselves to the jurisdiction of this state within the meaning
11 of this section.

12 "Section 17.62. PENALTIES. (a) Any person who, with
13 intent to avoid, evade, or prevent compliance, in whole or in
14 part, with Section 17.60 or 17.61 of this subchapter, removes
15 from any place, conceals, withholds, or destroys, mutilates,
16 alters, or by any other means falsifies any documentary material
17 or merchandise or sample of merchandise is guilty of a misdemeanor
18 and on conviction is punishable by a fine of not more than \$5,000
19 or by confinement in the county jail for not more than one year,
20 or both.

21 "(b) If a person fails to comply with a directive of the
22 consumer protection division under Section 17.60 of this subchapter
23 or with a civil investigative demand for documentary material
24 served on him under Section 17.61 of this subchapter, or if
25 satisfactory copying or reproduction of the material cannot be
26 done and the person refuses to surrender the material, the consumer

1 protection division may file in the district court in the county
2 in which the person resides, is found, or transacts business, and
3 serve on the person, a petition for an order of the court for
4 enforcement of Sections 17.60 and 17.61 of this subchapter. If
5 the person transacts business in more than one county, the petition
6 shall be filed in the county in which the person maintains his
7 principal place of business, or in another county agreed on by
8 the parties to the petition.

9 "(c) When a petition is filed in the district court in any
10 county under this section, the court shall have jurisdiction to
11 hear and determine the matter presented and to enter any order
12 required to carry into effect the provisions of Sections 17.60
13 and 17.61 of this subchapter. Any final order entered is subject
14 to appeal to the Texas Supreme Court. Failure to comply with any
15 final order entered under this section is punishable by contempt.

16 "Section 17.63. APPLICATION. The provisions of this
17 subchapter apply only to acts or practices occurring after the
18 effective date of this subchapter, except a right of action or
19 power granted to the attorney general under Chapter 10, Title 79,
20 Revised Civil Statutes of Texas, 1925, as amended, prior to the
21 effective date of this subchapter."

22 Sec. 2. (a) Amend Section 13, Article 21.21, Texas
23 Insurance Code, as amended, to read as follows:

24 "Section 13. Rules and Regulations. (a) The State Board
25 of Insurance is authorized to promulgate and may promulgate and
26 enforce reasonable rules and regulations and may order such

1 provision as is necessary in the accomplishment of the purposes
2 of this Article and Article 21.20, including, but not limited to,
3 such express provision within the purposes of these Articles as
4 it deems necessary or as is required to affect necessary uniformity
5 with the laws of other states or the United States or in conformity
6 with the adopted procedures of the National Association of
7 Insurance Commissioners notwithstanding any previous definition
8 or interpretation of terms used in these Articles had in or derived
9 from the common law or other statutory law of this state.

10 "(b) A petition may be submitted to the Board to adopt,
11 amend, or repeal a regulation. The petition must be signed by
12 100 interested persons and supported by evidence that a particular
13 act or practice has been or could be false, misleading or deceptive
14 to the insurance buying public, or that an act or practice declared
15 to be false, misleading, or deceptive by a regulation of the Board
16 is not in fact false, misleading, or deceptive. Within 30 days
17 after receipt of the petition the Board must either deny the
18 petition or initiate hearing proceedings under this section.

19 "(c) On denial of the petition the Board must state the
20 reason or reasons for denial in writing. Denial is expressly
21 authorized if the action sought by the petition would destroy
22 uniformity with the laws of other states or of the United States
23 or would not be in conformity with the adopted procedures of the
24 National Association of Insurance Commissioners.

25 "(d) If in response to the petition the Board determines
26 to hold a hearing, such hearing shall be open to the public and

1 any person may present testimony, data, or other information in
2 writing or orally to the Board regarding the acts or practices
3 under consideration.

4 "(e) A person aggrieved by the denial of the hearing under
5 Subsection (b) of this section or by the adoption, amendment, or
6 repeal of a regulation or failure to issue a regulation under
7 this section, may file a petition in a district court of Travis
8 County for a declaratory judgment on the validity or applicability
9 of a regulation adopted, amended, or repealed under this section
10 or on the denial of a hearing under Subsection (b) of this section.
11 The Board shall be made a party to the action. In a suit under
12 this subsection the district court may issue injunctions.

13 "(f) The action of the Board in adopting, amending,
14 repealing, or failing to adopt a regulation or denying a hearing
15 may be invalidated only if it is found that it:

16 "(1) violates a constitutional or state statutory
17 provision:

18 "(2) exceeds the statutory authority of the Board:

19 "(3) is arbitrary or capricious or characterized by
20 abuse of discretion or unwarranted exercise of discretion:

21 "(4) is so vague that it does not establish
22 sufficiently definite standards with which conduct can be
23 conformed:

24 "(5) is made on unlawful procedure: or

25 "(6) is clearly erroneous in view of the reliable,
26 probative, and substantial evidence in the whole record as

1 submitted."

2 (b) Amend Section 7, Article 21.21, Texas Insurance Code,
3 as amended, to read as follows:

4 "Section 7. Cease and Desist Orders [~~and Modifications~~
5 ~~Thereof~~].

6 "(a) If, after such hearing under the terms of Section 6
7 of the Act, the Board shall determine that the method of
8 competition or the act or practice in question is defined in
9 Section 4 of this Article, or rules or regulations issued under
10 this Article, or in Section 17.46 of the Business & Commerce Code,
11 as amended, and that the person complained of has engaged in such
12 method of competition, act or practice in violation of this Article
13 or rules and regulations issued under this Article or of the
14 Deceptive Trade Practices--Consumer Protection Act (Sections 17.41
15 et seq., Business & Commerce Code), as specified in Section 17.46
16 of the Business & Commerce Code [Act], it shall reduce its findings
17 to writing and [~~shall~~] issue and cause to be served upon the
18 person charged with the violation an order requiring such person
19 to cease and desist from engaging in such method of competition,
20 act or practice. [7]

21 "(b) Until a petition appealing from such order shall have
22 been filed in a [~~the~~] District Court of Travis County, Texas, in
23 accordance with Subchapter F of Chapter 21 of the Insurance Code
24 of this state, or any amendment thereof, the Board may at any
25 time, upon such notice and in such manner as it shall deem proper,
26 modify or set aside in whole or in part any order issued under

1 this section.

2 "(c) Any person who violates the terms of a cease and
3 desist order under this section shall be given notice to appear
4 and show cause, at a hearing to be held in conformity with Section
5 6 of this Article, why he should not forfeit and pay to the state
6 a civil penalty of not more than \$1,000 per violation and not to
7 exceed a total of \$5,000. In determining whether or not a cease
8 and desist order has been violated, the Board shall take into
9 consideration the maintenance of procedures reasonably adapted
10 to insure compliance with the order.

11 "(d) An order of the Board awarding civil penalties under
12 Subsection (c) of this section applies only to violations of this
13 order incurred prior to the awarding of the penalty order."

14 (c) Amend Article 21.21, Texas Insurance Code, as amended,
15 by adding Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and
16 24 to read as follows:

17 "Section 14. Administrative Class Action. (a) In connection
18 with the issuance of a cease and desist order as provided in
19 Section 7 of this Article or upon application of any aggrieved
20 person, the Board may, after notice and hearing as provided in
21 Section 6 of this Article, in connection with the issuance of a
22 cease and desist order resulting from a finding that an insurer
23 has engaged in a method of competition, act or practice in
24 violation of this Article, rules or regulations issued under this
25 Article, or Section 17.46, Business & Commerce Code, as amended,
26 or upon finding by the Board that the aggrieved person and persons

1 similarly situated were induced to purchase a policy of insurance
2 as a result of the insurer engaging in a method of competition,
3 act or practice in violation of this Article, rules or regulations
4 issued under this Article or Section 17.46, Business & Commerce
5 Code, as amended, the Board may require the insurer to account
6 for all premiums collected for policies issued during the
7 immediately preceding two years in connection with such acts in
8 violation of this Article and require: (i) such insurer to give
9 notice to all persons from whom such premiums were collected, and
10 (ii) to refund the total of all premiums collected from each such
11 person, electing to accept a premium refund in exchange for
12 cancellation of the policy of insurance issued. Premiums so
13 refunded shall be net of policy benefits actually paid by such
14 insurer while the policy of insurance was in force. The Board
15 shall specify a reasonable time within which the insurer shall
16 be required to make such premium refunds.

17 "(b) If an insurer fails to comply with the Board's
18 requirement to refund such premiums within the time specified,
19 the Board may, in addition to any other sanctions provided for
20 in the Insurance Code and other applicable laws, report such
21 failure to the Attorney General and request the Attorney General
22 to file a suit to enforce the Board's requirement for refund of
23 premiums. Venue for such suit shall lie in the District Court
24 of Travis County, Texas, and upon finding by the court that such
25 requirement of the Board was lawfully entered and that the insurer
26 has failed to comply with such requirement, the Court shall enter

1 an appropriate order to enforce such Board order. The Court may
2 enforce its order through contempt proceedings.

3 "(c) Compliance or attempts to comply with the Board's
4 requirement to refund premiums shall be an offer to compromise
5 and shall be inadmissible as evidence. Compliance or attempts
6 to comply with the Board's requirement for refund of premium shall
7 not be considered as admission of engaging in an unlawful act or
8 practice. Evidence of compliance or attempts to comply with the
9 Board's requirements of refund or premium may be introduced by
10 the defendant for the purpose of establishing good faith or to
11 show compliance with the Board's requirement.

12 "Section 15. Injunctions. (a) If the Board has reason
13 to believe that any person in the insurance business in this state
14 is engaging in, has engaged in, or is about to engage in any act
15 or practice declared to be unlawful by this Article or rules or
16 regulations issued under this Article or by Section 17.46 of the
17 Business & Commerce Code, as amended, and that proceedings would
18 be in the public interest, the Board may request the Attorney
19 General to bring an action in the name of the state against the
20 person to restrain by temporary or permanent injunction the use
21 of such method, act, or practice.

22 "(b) An action brought under Subsection (a) of this section
23 may be commenced in the district court of the county in which the
24 person against whom it is brought resides, has his principal place
25 of business, is doing business, or in the district court of the
26 county where the transaction occurred or any substantial portion

1 of the transaction occurred, or in a district court of Travis
2 County. The court may issue appropriate temporary or permanent
3 injunctions, and the injunctions shall be issued without bond.

4 "(c) In addition to the request for a temporary or permanent
5 injunction in a proceeding brought under Subsection (a) of this
6 section, the Attorney General, on a finding by the court that the
7 defendant has engaged or is engaging in a practice declared to
8 be unlawful by Article 17.46 of the Business & Commerce Code, as
9 amended, this Article, or rules or regulations issued under this
10 Article, may request a civil penalty of not more than \$2,000 per
11 violation and not to exceed a total of \$10,000 to be paid to the
12 state.

13 "(d) The court may make such additional orders or judgments
14 as are necessary to compensate identifiable persons for actual
15 damages or restoration of money or property, real or personal,
16 which may have been acquired by means of any act or practice
17 restrained. Damages may not include any damages incurred beyond
18 a point two years prior to the institution of the action.

19 "(e) Any person who violates the terms of an injunction
20 under this section shall forfeit and pay to the state a civil
21 penalty of not more than \$10,000 per violation not to exceed
22 \$50,000. In determining whether or not an injunction has been
23 violated the court shall take into consideration the maintenance
24 of procedures reasonably adapted to insure compliance with the
25 injunction. For the purposes of this section, the district court
26 issuing the injunction shall retain jurisdiction, and the cause

1 shall be continued, and in such cases, the Attorney General with
2 prior notice to the Board, acting in the name of the state, may
3 petition for recovery of civil penalties under this section.

4 "(f) An order of the court awarding civil penalties under
5 Subsection (e) of this section applies only to violations of the
6 injunction incurred prior to the awarding of the penalty order.
7 Second or subsequent violations of an injunction issued under
8 this section are subject to the same penalties set out in
9 Subsection (e) of this section.

10 "Section 16. Relief Available to Injured Parties. (a)
11 Any person who has been injured by another's engaging in any of
12 the practices declared in Section 4 of this Article or in rules
13 or regulations lawfully adopted by the Board under this Article
14 to be unfair methods of competition and unfair and deceptive acts
15 or practices in the business of insurance or in any practice
16 defined by Section 17.46 of the Business & Commerce Code, as
17 amended, as an unlawful deceptive trade practice may maintain an
18 action against the company or companies engaging in such acts or
19 practices.

20 "(b) In a suit filed under this section, any plaintiff who
21 prevails may obtain:

22 "(1) three times the amount of actual damages plus
23 court costs and attorneys' fees reasonable in relation to the
24 amount of work expended;

25 "(2) an order enjoining such acts or failure to act;

26 "(3) any other relief which the court deems proper.

1 "(c) On a finding by the court that an action under this
2 section was groundless and brought in bad faith or for the purpose
3 of harassment, the court may award to the defendant reasonable
4 attorneys' fees in relation to the amount of work expended.

5 "(d) In an action under this section, damages may not
6 include any damages incurred beyond a point two years prior to
7 the institution of the action.

8 "Section 17. Class Actions. (a) If a member of the
9 insurance buying public has been damaged by an unlawful method,
10 act, or practice defined in Section 4 of this Article or by the
11 rules and regulations lawfully adopted by the Board under this
12 Article or by any practice defined by Section 17.46 of the Business
13 & Commerce Code, as amended, as an unlawful deceptive trade
14 practice, the Board may request the Attorney General to bring a
15 class action, or the individual damaged may bring an action on
16 behalf of himself and others similarly situated, to recover damages
17 and relief as provided in this section.

18 "(b) A plaintiff who prevails in a class action under this
19 section may recover:

20 "(1) court costs and attorneys' fees reasonable in
21 relation to the amount of work expended in addition to actual
22 damages;

23 "(2) an order enjoining the act or failure to act;

24 "(3) any other relief which the court deems proper.

25 "(c) On a finding by the court that an action under this
26 section was brought by an individual plaintiff in bad faith or

1 for the purpose of harassment, the court may award to the defendant
2 reasonable attorneys' fees in relation to the work expended and
3 court costs.

4 "(d) In an action under this section, damages may not
5 include any damages incurred beyond a point two years prior to
6 the institution of the action.

7 "(e) An action under this section may not be maintained
8 if an administrative class action under Section 14 of this Article
9 has been initiated or has resulted in a final determination
10 regarding the same acts or practices and the same defendant in
11 the action under this section.

12 "Section 18. Class Action: Procedure. (a) The court
13 shall permit one or more members of a class to sue or be sued as
14 representative parties on behalf of the class only if:

15 "(1) the class is so numerous that joinder of all
16 members is impracticable;

17 "(2) there are questions of law or fact common to
18 the class;

19 "(3) the claims or defenses of the representative
20 parties are typical of the claims or defenses of the class; and

21 "(4) the representative parties will fairly and
22 adequately protect the interests of the class.

23 "(b) An action may be maintained as a class action if the
24 prerequisites of Subsection (a) of this section are satisfied and
25 in addition:

26 "(1) the prosecution of separate actions by or against

1 individual members of the class would create a risk of:

2 "(A) inconsistent or varying adjudications with
3 respect to individual members of the class which would establish
4 incompatible standards of conduct for the party opposing the
5 class; or

6 "(B) adjudication with respect to individual
7 members of the class which would as a practical matter be
8 dispositive of the interests of the other members not parties to
9 the adjudications or substantially impair or impede their ability
10 to protect their interests; or

11 "(2) the party opposing the class has acted or refused
12 to act on ground generally applicable to the class, thereby making
13 appropriate final injunctive relief or corresponding declaratory
14 relief with respect to the class as a whole; or

15 "(3) the court finds that the questions of law or
16 fact common to the members of the class predominate over any
17 questions affecting only individual members, and that a class
18 action is superior to other available methods for the fair and
19 efficient adjudication of the controversy. The matters pertinent
20 to the findings include:

21 "(A) the interest of members of the class in
22 individually controlling the prosecution or defense of separate
23 actions;

24 "(B) the extent and nature of any litigation
25 concerning the controversy already commenced by or against members
26 of the class;

1 "(C) the desirability or undesirability of
2 controversy concentrating the litigation of the claims in the
3 particular forum; and

4 "(D) the difficulties likely to be encountered
5 in the management of a class action.

6 "(c) In construing this section, the courts of Texas shall
7 be guided by the decisions of the federal courts interpreting
8 Rule 23, Federal Rules of Civil Procedure, as amended.

9 "(d) As soon as practicable after the commencement of an
10 action brought as a class action, the court shall determine by
11 order whether it is to be maintained as a class action. An order
12 under this subsection may be altered or amended before a decision
13 on the merits. An order determining that the action may or may
14 not be brought as a class action is an interlocutory order which
15 is appealable and the procedures provided in Rule 385, Texas Rules
16 of Civil Procedure, apply.

17 "(e) If the action is permitted as a class action, the
18 court shall direct to the members of the class the best notice
19 practicable under the circumstances, including individual notice
20 to all members who can be identified through reasonable effort.

21 "(f) The notice shall contain a statement that:

22 "(1) the court will exclude the member notified from
23 the class if he so requests by a specified date;

24 "(2) the judgment, whether favorable or not, will
25 include all members who do not request exclusion; and

26 "(3) any member who does not request exclusion, if

1 he desires, may enter an appearance through counsel.

2 "(g) A class action may not be dismissed, settled, or
3 compromised without the approval of the court, and notice of the
4 proposed dismissal, settlement, or compromise shall be given to
5 all members of the class in such manner as the court directs.

6 "(h) When appropriate, an action may be brought or
7 maintained as a class action with respect to particular issues
8 or a class may be divided into subclasses and each subclass treated
9 as a class, and the provisions of this section shall be construed
10 and applied accordingly.

11 "(i) The judgment in a class action shall describe those
12 to whom the notice was directed and who have not requested
13 exclusion and those the court finds to be members of the class.
14 The court shall direct to the members of the class the best notice
15 practicable under the circumstances, including individual notice
16 to all members who can be identified through reasonable effort.

17 "(j) In the conduct of a class action the court may make
18 appropriate orders:

19 "(1) determining the course of proceedings or
20 prescribing measures to prevent undue repetition or complication
21 in the presentation of evidence or argument;

22 "(2) requiring, for the protection of the members
23 of the class or otherwise for the fair conduct of the action,
24 that notice be given in such manner as the court may direct to
25 some or all of the members or to the Attorney General of any step
26 in the action, or of the proposed extent of the judgment, or of

1 the opportunity of members to signify whether they consider the
2 representation fair and adequate, to intervene and present claims
3 or defenses, or otherwise to come into the action;

4 "(3) imposing conditions on the representative parties
5 or on intervenors;

6 "(4) requiring that the pleadings be amended to
7 eliminate allegations as to representation of absent persons, and
8 that the action proceed accordingly; or

9 "(5) dealing with similar procedural matters.

10 "(k) The filing of a suit under this section tolls the
11 statute of limitations for bringing a suit by an individual under
12 Section 16 of this Article. An order of the court denying the
13 bringing of a suit as a class action does not affect the ability
14 of an individual to bring the same or a similar suit under Section
15 16 of this Article.

16 "Section 19. Preliminary Notice. (a) At least 30 days
17 prior to the commencement of a class action suit for damages under
18 Section 17 of this Article, the prospective plaintiff must notify
19 the intended defendant of his complaint and make demand that the
20 defendant provide relief to the prospective plaintiff and others
21 similarly situated. A copy of the notice must also be sent to
22 the commissioner of insurance.

23 "(b) The notice must be in writing and sent by certified
24 or registered mail, return receipt requested, to the place where
25 the transaction occurred, the intended defendant's principal place
26 of business in this state, or if neither will effect notice, to

1 the office of the Secretary of State of Texas.

2 "(c) An action for injunctive relief under Section 17 of
3 this Article may be commenced without compliance with Subsection
4 (a) of this section. Not less than 30 days after the commencement
5 of an action for injunctive relief, and after compliance with the
6 provisions of Subsection (a) of this section, the plaintiff may
7 amend his complaint without leave of court to include a request
8 for damages.

9 "(d) No damages may be awarded to a class under Section
10 17 of this Article if within 30 days of receipt of the notice the
11 intended defendant furnished the plaintiff, by certified or
12 registered mail, return receipt requested, a written offer of
13 settlement. The offer of settlement must include a statement
14 that:

15 "(1) all others similarly situated have been
16 adequately identified or a reasonable effort to identify such
17 others has been made, and a description of the class so identified
18 and the method employed to identify them;

19 "(2) all persons so identified have been notified
20 that upon request the intended defendant will provide relief to
21 them and all others similarly situated, and a complete explanation
22 of the relief being afforded and a copy of the notice or
23 communication which the intended defendant is providing to the
24 members of the class;

25 "(3) the relief being afforded the consumer has been,
26 or if said offer is accepted by the consumer, will be given within

1 a stated reasonable time; and

2 "(4) the practice complained of has ceased.

3 "(e) Attempts to comply with the provisions of this section
4 by a person receiving a demand shall be an offer to compromise
5 and shall be inadmissible as evidence. Attempts to comply with
6 a demand shall not be considered an admission of engaging in an
7 unlawful act or practice. Evidence of compliance or attempts to
8 comply with the provisions of this section may be introduced by
9 a defendant for the purpose of establishing good faith or to show
10 compliance with the provisions of this section.

11 "Section 20. Damages: Defense. No award of damages may
12 be given in any class action filed under Section 17 of this Article
13 if the defendant:

14 "(1) proves that the action complained of resulted
15 from a bona fide error notwithstanding the use of reasonable
16 procedures adopted to avoid any error; and

17 "(2) made restitution of any consideration received
18 from any member of the class.

19 "Section 21. Venue. Any action brought under this Article
20 shall be commenced in a district court of Travis County, Texas,
21 if the State Board of Insurance is a party thereto.

22 "Section 22. Voluntary Compliance. (a) In the
23 administration of this Article the Board may accept assurance of
24 voluntary compliance with respect to any act or practice which
25 violates this Article or regulations issued under this Article
26 or any act declared to be unlawful in Section 17.46 of the Business

1 & Commerce Code, as amended, from any person who is engaging in,
2 has engaged in, or is about to engage in the act or practice.
3 The assurance shall be in writing and shall be filed with the
4 Board.

5 "(b) The acceptance of an assurance of voluntary compliance
6 may be conditioned on the stipulation that the person in violation
7 of this Article or regulations issued under this Article, or
8 Section 17.46, Business & Commerce Code, as amended, restore to
9 any person in interest any money which may have been acquired by
10 means of acts or practices which violate this Article or
11 regulations issued under this Article, or Section 17.46, Business
12 & Commerce Code, as amended.

13 "(c) An assurance of voluntary compliance shall not be
14 considered an admission of prior violation of this Article or
15 regulations issued under this Article or Section 17.46, Business
16 & Commerce Code, as amended. However, unless an assurance has
17 been rescinded by agreement, subsequent failure to comply with
18 the terms of an assurance is prima facie evidence of a violation
19 of this Article or regulations issued under this Article or Section
20 17.46, Business & Commerce Code, as amended.

21 "(d) Matters closed by the filing of an assurance of
22 voluntary compliance may be reopened at any time. Assurance of
23 voluntary compliance shall in no way affect individual rights of
24 action under this Article, except that the right of individuals
25 with regard to money received pursuant to a stipulation in the
26 voluntary compliance under Subsection (b) of this section are

1 governed by the terms of the voluntary compliance.

2 "Section 23. Those civil penalties, premium refunds,
3 judgments, compensatory judgments, individual recoveries, orders,
4 class action awards, costs, damages, or attorneys' fees which are
5 assessed or awarded as provided in this Article shall be paid
6 only from the capital or surplus funds of the offending insurance
7 company, and no such payments shall take precedence over, be in
8 priority to, or in any manner be applicable to the provisions of
9 Article 21.28-B, Texas Insurance Code, known as the Loss Claimant's
10 Priorities Act, Article 21.28-C, Texas Insurance Code, known as
11 the Property and Casualty Insurance Guaranty Act, Article 21.28-E,
12 Texas Insurance Code, known as the Texas Life, Health and Accident
13 Guaranty Act, any other similar insurance guaranty act hereafter
14 enacted by the Texas Legislature, or Article 21.39-A, Texas
15 Insurance Code, known as the Asset Protection Act, and such special
16 statutes and the priorities of funds created thereby shall be
17 exempt from the provisions of this Article.

18 "Section 24. No remedy or civil penalty shall lie or exist
19 by reason of any act or omission occurring prior to the effective
20 date of this Act."

21 Sec. 3. Chapter 10, Title 79, Revised Civil Statutes of
22 Texas, 1925, as amended (Article 5069-10.01, et seq., Vernon's
23 Texas Civil Statutes), is repealed.

24 Sec. 4. If any provision of this Act or the application
25 thereof to any person or circumstances is held invalid, such
26 invalidity shall not affect other provisions or applications of

H.B. No. 417

1 the Act which can be given effect without the invalid provision
2 or application, and to this end the provisions of this Act are
3 declared to be severable.

4 Sec. 5. The importance of this legislation and the crowded
5 condition of the calendars in both houses create an emergency and
6 an imperative public necessity that the constitutional rule
7 requiring bills to be read on three several days in each house
8 be suspended, and this rule is hereby suspended, and that this
9 Act take effect and be in force from and after its passage, and
10 it is so enacted.

President of the Senate

Speaker of the House

I hereby certify that H.B. No. 417 was passed by the House on April 11, 1973, by the following vote: Yeas 133, Nays 9; and that the House concurred in Senate amendments to H.B. No. 417 on May 7, 1973, by the following vote: Yeas 109, Nays 23; and that the House adopted H.C.R. No. 177 authorizing certain corrections in H.B. No. 417 on May 9, 1973, by the following vote: Yeas 100, Nays 0 and 24 present not voting.

Chief Clerk of the House

H.B. No. 417

I hereby certify that H.B. No. 417 was passed by the Senate, with amendments, on May 4, 1973, by the following vote: Yeas 22, Nays 7; and that the Senate adopted H.C.R. No. 177 authorizing certain corrections in H.B. No. 417 on May 10, 1973 by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

APPROVED:

May 21, 1973
Date

Signed
Governor

FILED IN THE OFFICE OF THE
SECRETARY STATE
4:15 PM O'CLOCK

MAY 21 1973

.....
Secretary of State



LUTHER JONES
P. O. BOX 2910
AUSTIN, TEXAS 78767

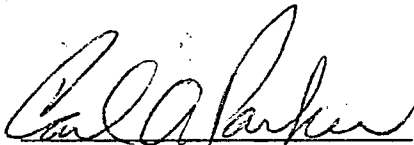
DISTRICT 72, PLACE 4
P. O. BOX 5391
EL PASO, TEXAS 79953

State of Texas
House of Representatives
Austin, Texas

COMMITTEES:
APPROPRIATIONS
INSURANCE
RULES

TO WHOM IT MAY CONCERN:

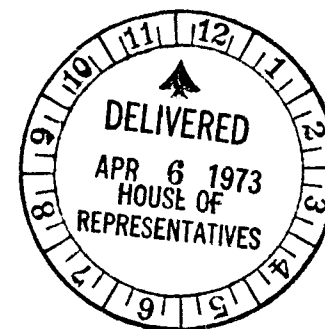
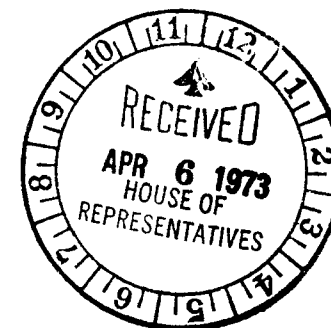
Luther Jones has my permission to co-sign House
Bill 417.


Carl A. Parker

H.B. No. 417

A BILL TO BE ENTITLED
AN ACT

By Larkins
Jefferson, et al
JONES - El Paso



relating to the definition and regulation of unlawful trade, acts and practices, the protection of Texas consumers, and providing for consumer remedies; amending Chapter 17, Business & Commerce Code, as amended, by adding Subchapter E; repealing Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Articles 5069-10.01 et seq., Vernon's Texas Civil Statutes); and declaring an emergency.

FILED FEB 7 1973

READ 1ST TIME
AND REFERRED TO COMMITTEE ON

Business & Industry

Dorothy Hallman

Chief Clerk, House of Representatives

APR 6 1973

REPORTED FAVORABLY SENT TO PRINTER AS AMENDED

PRINTED, DISTRICTED AND

REPORTED TO COMMITTEE ON

CALENDAR 11:25 P.M. APR 6 1973
(Time) (Date)

APR 10 1973 READ SECOND

TIME amended AND

ORDERED ENGROSSED

record vote of
129 ayes, 11 nays

Dorothy Hallman
Chief Clerk, House of Representatives

APR 10 1973

SENT TO ENGROSSING CLERK

COMMITTEE SUBSTITUTE

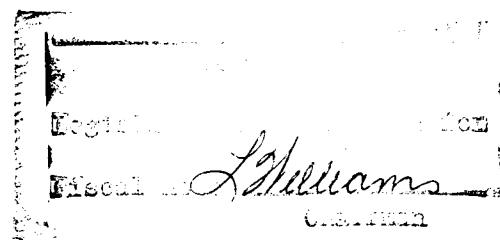
Amended to conform to body of
House authority of Rule IV, Sec. 28
of the House of Representatives.

(Date)

(Engrossing and Enrolling
Clerk)

APPROVED:

(Author)



By: Parker of Jefferson, Temple, et al

C
H.B. No. 417

A BILL TO BE ENTITLED

AN ACT

relating to the definition and regulation of unlawful trade, acts and practices, the protection of Texas consumers, and providing for consumer remedies; amending Chapter 17, Business & Commerce Code, as amended, by adding Subchapter E; amending Sections 7 and 13, Article 21.21, Insurance Code, as amended, and adding new Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24; repealing Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended (Articles 5069-10.01 et seq., Vernon's Texas Civil Statutes); and declaring an emergency.

2- 7-73 Filed.
2- 8-73 Read first time and referred to Committee on Business and Industry.
4- 6-73 Reported favorably as amended, sent to printer.
4- 6-73 Printed, distributed and referred to Committee on Calendars at 11:35 p.m.
4-10-73 Read second time, amended and ordered engrossed by the following vote: Yeas 129, Nays 11.

Dorothy Hallman
Chief Clerk, H. of R.

4-10-73 Sent to Engrossing Clerk.
4-10-73 Engrossed.

Cara Suggin
Engrossing Clerk, H. of R.

APR 11 1973 RETURNED FROM ENGROSSING CLERK

APR 11 1973 Read third time
amended and Passed

by following vote: yeas 133

Nays 9

Dorothy Hallman
Chief Clerk
HOUSE OF REPRESENTATIVES

APR 11 1973

~~SENT TO SENATE~~ SENT TO ENGROSSING CLERK

APR 12 1973

RETURNED FROM ENGROSSING CLERK

SENT TO SENATE

APR 12 1973 Received from the House
APR 12 1973 Read, referred to Committee on JURISPRUDENCE
Reported favorably.
APR 27 1973 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.
Ordered not printed.
MAY 3 1973 Regular order of business suspended by

(unanimous consent.)

(25 years, 6 days.)

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ years, _____ days.

MAY 3 1973 Read second time MAY 3 1973 passed to third reading *by vote of 23 yeas and 8 nays.*

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of _____ years, _____ days to place bill on third reading and final passage.

MAY 4 1973 Read third time and passed by

(unanimous vote.)

(22 yeas, 7 nays.)

OTHER ACTION:

*MAY 3 1973,
Regular order of
business suspended
by "23 yeas, 6 nays."

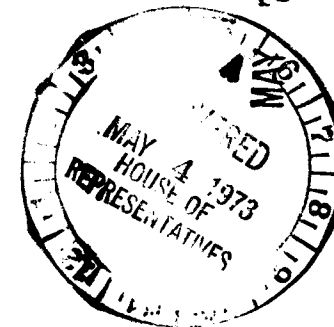
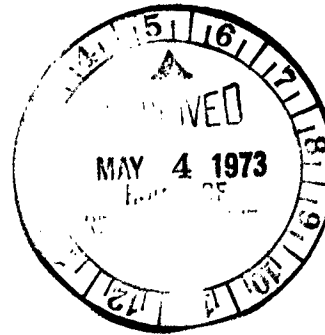
Charles Schnabel

Secretary of the Senate

RETURNED FROM SENATE

Committee Substitute
Dorothy Hallman
Chief Clerk, House of Representatives

MAY 4 1973 Returned to HOUSE



SENT TO ENROLLING CLERK
MAY 7 1973

MAY 7 1973

The House has concurred in Senate amendments to House Bill No. 417 by vote of 109 yeas, 23 nays.

Dorothy Hallman
Chief Clerk, House of Representatives